

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on October 09, 2013

Judgment Delivered on November 08, 2013

+ LPA 706/2005

KUNDAN LAL Appellant

Represented by: Appellant in person

versus

INDIAN RED CROSS SOCIETY & ANR. Respondents

Represented by: Mr.L.R.Khatana, Advocate with
Mr.Sudhir Naagar and Mr.Rajesh
Rexwal, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The instant appeal impugns the judgment and order dated March 16, 2005 passed by a learned Single Judge dismissing W.P.(C) No.7761/2003 filed by the appellant and as a result order dated June 24, 2002 transferring appellant as also the subsequent order dated September 03, 2002 passed by the Competent Authority of the first respondent terminating services of the appellant were upheld.

2. Disciplinary proceedings of the employees of the first respondent are admittedly governed by CCS (CCA) Rules, 1965, being adopted by a resolution in the year 1980, except where specific regulations are framed by the first respondent.

3. The appellant was serving the first respondent as a Lower Division Clerk when he was served with a memorandum dated May 15,

2002 alleging against him that he was guilty of arrogance, was indecent, rude and defiant towards his superior, Colonel A.S.Budhiraja. On May 24, 2002 appellant was suspended pending inquiry. On May 30, 2002 a charge memo specifying the charges was issued.

4. Before the Inquiry Officer, on June 21, 2002, appellant admitted the acts of misdemeanour attributed to him and pleaded leniency stating he was facing problems in his domestic life and taking a lenient view vide order dated June 24, 2002 a penalty of forfeiting one increment with cumulative effect was inflicted; simultaneously transferring appellant to Arakonam Warehouse in Tamil Nadu with a caution that serious action would be taken if misconduct was repeated.

5. On July 01, 2002 appellant was directed to vacate the residence at Sarojini Nagar allotted to him when he was to serve at Delhi and now stood transferred to Tamil Nadu. On July 26, 2002 appellant intimated financial hardship to finance his movement to Tamil Nadu and prayed to be released ₹21,000/- from his P.F.Account to facilitate his movement to Tamil Nadu; a request which was accepted. On July 29, 2002 said sum was released to him as a Non-Refundable Advance from his P.F.Account. Receiving the money the appellant did not join duty at Arakonam Warehouse.

6. On August 05, 2002 a memorandum by way of show cause was issued to the appellant as to why his services be not terminated for the act of disobeying lawful order (of transfer) to which he responded on August 07, 2002 stating that he had no intention to disobey the transfer order. He requested that his family be permitted to reside at Sarojini Nagar and that he be sanctioned leave till August 12, 2002.

7. The request was not accepted. Appellant was directed vide communication dated August 09, 2002 to join in Tamil Nadu latest by August 12, 2002. The appellant informed that he had purchased a railway ticket to travel to Tamil Nadu. But he did not join. On August 29, 2002 the Assistant Superintendent (Stores) of the Zonal Warehouse Compound at Arakonam sent a telegram to the Head Office informing appellant not having joined and followed up the telegram with a letter dated September 02, 2002 addressed to the Head Office which reads as under:-

“With reference to the NHQ office order No.26 dated 24.06.2002 regarding transfer of Sh.Kundan Lal LDC from NRCS NHQ to Arakonam Warehouse I am to state that as on date Sh.Kundan lal has not joined duty in this Warehouse.

I am enclosing herewith a copy of the telegram dated 29.08. received today from Sh.Kundan Lal for your kind information please.”

8. Neither did the appellant report for duty at Delhi nor at Tamil Nadu. Leave applied by him was not sanctioned. His services were terminated on September 03, 2002 and since he did not receive the termination order the same was served by publication in the Times Of India, Indian Express and Navbharat Times.

9. Appellant filed W.P.(C) No.7761/2003 pleading that the previous disciplinary proceedings had terminated in the penalty of forfeiture of one increment and that the penalty of termination of service was without an inquiry; being a major penalty the CCS (CCA) Rules, 1965 were violated.

10. The contention was rejected by the learned Single Judge holding that the leniency shown to the appellant did not have the desired result and the misdemeanour of not reporting for duty and failure to vacate the quarter was sufficient to dismiss him from service.

11. The contention of the appellant drawing distinction between the words 'dismissal' and 'termination' and that the Competent Authority could only pass orders of promotion, demotion, suspension, dismissal and withholding of earned increment of the staff was rejected by the learned Single Judge holding that semantics have no place and that the power of dismissal included the power to terminate the service.

12. The plea that the Secretary General had acted as a Judge in her own cause was rejected by the learned Single Judge with a finding that the misconduct was directed towards Col.A.S.Buddhiraja and not the Secretary General and thus it could not be said that the complainant acted as the Judge.

13. Thus, the learned Single Judge found the writ petition to be devoid of merit and while dismissing the same held as under:

“12. Adequate opportunities were given to Show Cause against the proposed action and the findings of the Inquiry Officer were against the Petitioner. In view of his admission of guilt, and his prayer for leniency, this matter stood closed. Thereafter, the Petitioner has disobeyed the transfer Order. An inquiry is instituted with a view to determine the disputed question of facts. At no point of time has it been in contention that the Petitioner had obeyed the transfer Order. He had been granted/afforded an opportunity to Show Cause against the termination of his services but he had avoided service, and had on particular date refused to accept the notice. It would be a travesty of law to expect the

Management to carry out a full-fledged Inquiry even these circumstances.....”

14. Being aggrieved the appellant filed the instant appeal. Before we deal with the rival submissions of the parties we note the brief summary of proceedings that had taken place before us. The matter was partly heard by us on August 29, 2013. Thereafter it was listed on September 06, 2013 when it could not be taken up for hearing returnable on September 20, 2013. The matter could not be taken up on that date as the Bench could not assemble. On September 27, 2013 the matter was adjourned for October 03, 2013. A request for adjournment was made on October 03, 2013 as well. Since the counsel for the appellant had shown his desire to withdraw from the matter the appellant sought some more time to engage another counsel. He did not engage any counsel between September 27, 2013 and October 09, 2013. Under such circumstances we have heard the appellant as well as the counsel for the respondents. The appellant has also filed his written submissions on October 21, 2013 pursuant to, time granted for filing the same.

15. The appellant challenges the orders of the learned Single Judge on the following grounds:

(a) The order of transfer of the appellant from Delhi to Arakonam Tamil Nadu is, as a matter of punishment and this was ex-facie reflected in the order of transfer as his conduct will be observed in case it is found that his conduct is not upto the mark he will be visited with a severest punishment.

(b) He could not undertake the journey to Arakonam as he was confined to bed on account of his ailment of back pain for which he had been advised rest by the Medical Officer of the Govt.

hospital, New Delhi.

(c) The judgments relied upon by the learned Single Judge have no application to the facts of the case and also in total disregard to the pronouncement of the Supreme Court that the ratio laid down in a particular case is not to be treated as theorems without seeing the context in which it has been passed.

(d) There is a difference between dismissal and termination and termination is only effected when a person is on probation and not with respect to a confirmed employee. Dismissal is a listed punishment in terms of CCS (CCA) Rules.

16. On the other hand, Mr.L.R.Khatana, learned counsel for the respondents would justify the termination of the appellant inasmuch as the respondents have shown leniency in imposing punishment of stoppage of one increment for very serious misconduct of being arrogant, rude, indecent, defiant behaviour of the appellant. Such a behaviour in normal circumstances must entail termination. Further he would submit that the appellant has on one pretext or the other avoided his transfer to Arakonam. Despite being granted advanced travelling allowance and the appellant having purchased ticket thereafter, not proceeded to his place of posting. The plea that he is not well because of back pain is an afterthought only to avoid transfer. The competent authority had given reasonable opportunity to the appellant to put forth his case. Unfortunately the plea of being not well was not accepted and since he was under observation with respect to his conduct, his services were rightly terminated. Mr.Khatana would also submit that the appellant have been avoiding the receipt of the termination order dated September 03, 2002.

17. He had to be served through publication. It was only in the month of February 17 2003, he for the first time, represented to the respondents of him being medically fit for resuming the duties. By that time the termination order had already been issued and had also come into effect. This conduct of the appellant would show that he was not interested in working with the respondents which is a humanitarian organization run on donations.

18. Mr.Khatana would also submit that despite the appellant being terminated on September 03, 2002 he continued to occupy the quarter No.RC-25, Sarojini Nagar, New Delhi which he should have vacated within one month from the date of termination of his services.

19. The respondents were forced to file a civil suit before the District Court seeking the eviction of the appellant. The Trial Court gave decision in favour of the respondents. The appellant filed an appeal before this Court against the order of the Trial Court being RFA No.322/2005. The said RFA was dismissed. He still continued to occupy the quarter. Ultimately in a proceedings in the Contempt Petition No.654/2010 the appellant handed over the keys of the quarter to the counsel for the society on November 01, 2010. The dues that worked out because of unauthorized occupation of the quarter in question amounts to ₹8,36,528/- and arrears of water and electricity charges amounting to ₹39,996/- for the period in question.

20. Having heard the appellant and the learned counsel for the parties, we hold that in so far as the conclusion of the learned Single Judge that the findings of the Inquiry Officer were against the petitioner are not correct inasmuch as the findings of the Inquiry Officer pertained to the charge memorandum dated May 30, 2002 which concluded in a

penalty imposed on June 24, 2002.

21. Before we deal with the effect of the order terminating appellant's service, we need to remind ourselves that the facts noted by us hereinabove would reveal that for a serious misdemeanour of gross insubordination the petitioner was let off leniently because he pleaded domestic disturbances. The petitioner was transferred to Tamil Nadu for good reasons. He and Col.A.S.Buddhiraja had to be not to be in close proximity with each other because appellant was having an animus towards Col.A.S.Buddhiraja.

22. The appellant took advance in sum of ₹21,000/- to purchase a rail ticket and proceed to Tamil Nadu. He did not do so. Admittedly, appellant's service entails All India transfer liability. In the decision reported as (2013) 12 Scale 157 Davalsab Husainsab Mulla vs. North West K.R.T.C the Supreme Court has observed as under:-

“...having regard to the act of misconduct found proved against the appellant in an inquiry held for that purpose by way of disciplinary procedure prescribed in the relevant rules, the conclusion of the Labour Court on this aspect cannot be assailed. As far as the misconduct alleged against the Appellant apart from his admission that he travelled on 30.11.1995 without a valid ticket, the evidence placed before the enquiry officer and the Labour Court fully established his other conduct of misbehaviour towards his superiors and other employees on 30.11.1995 as well as on 01.12.1995. Such misbehaviour was by way of abusing his superior officers for the simple reason that the checking squad questioned his conduct of travelling in the Corporation bus without a valid ticket. They were not mere abuses of simple nature. The exact wording used by the Appellant which has been recorded by the trial Court in its award discloses that in the course of such abuse

he also threatened Mr. Hiremath, the Checking Inspector by alleging that he will be done away with. Such a conduct of the Appellant towards his superiors and other employees was rightly condemned by the Respondent-Corporation while proceeding against him by way of disciplinary action and by passing the order of dismissal. Apart from the conduct which took place on 30.11.1995 and 01.12.1995 and for which he was proceeded against, the Appellant's past record was also demonstrated to be very bad. He was proceeded against on 27 occasions earlier also for his different acts of misconduct in which on one occasion he indulged in the conduct of threatening a co-employee. The cumulative effect of the above resulted in the Corporation passing the order of dismissal against the Appellant. Having regard to the above factors, the Labour Court rightly declined to exercise its discretionary jurisdiction under Section 11A of the Act to interfere with the punishment of dismissal imposed on the appellant.”

23. We note that on behalf of the appellant, two submissions were made before the learned Single Judge.

(a) Transfer of the appellant to Arakonam is punitive as transfer is not a permissible punishment and the same amounts to double jeopardy.

(b) Termination is bad as no inquiry was conducted nor adequate opportunity to show cause, Principles of Natural Justice have been violated calling for quashing of the order of termination.

24. The aforesaid two issues have been considered and dealt with by the learned Single Judge in para Nos.8 and 12, which we reproduced hereunder:

“8.A reading of the impugned Order also leaves

no matter of doubt that the only punishment that was inflicted on the Petitioner was that of the withholding of increment. The transfer was ordered keeping the exigencies of services in view and merely because a warning had been issued to the Petitioner that he should conduct himself properly, that decision does not transform itself into a punishment. This is especially so since the charges that had been levelled against the Petitioner are of a serious nature, and the punishment imposed manifested a lenient attitude towards him. In the event, the Petitioner has only abused this leniency, as he has failed altogether to report for duty and has filed this Writ Petition only when ejectment proceedings in respect of the staff quarters had been initiated against him by the Management. It is beneficial to reproduce this extract from the decision of the Apex Court in Union of India and Others vs. Janardhan Debanath and Another, (2004) 4 SCC 245:

14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehavior is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehavior or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirements, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public

interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration.....

12. Adequate opportunities were given to Show Cause against the proposed action and the findings of the Inquiry Officer were against the Petitioner. In view of his admission of guilt, and his prayer for leniency, this matter stood closed. Thereafter, the Petitioner had obeyed the transfer Order. An Inquiry is instituted with a view to determine the disputed question of facts. At no point of time has it been in contention that the Petitioner had obeyed the transfer Order. He had been granted/afforded an opportunity to Show Cause against the termination of his services but he had avoided service, and had on particular date, refused to accept the Notice. It would be a travesty of law to expect the Management to carryout a full-fledged Inquiry even in these circumstances. The Hon'ble Supreme Court has rendered the following opinion in Syndicate Bank vs. General Secretary, Syndicate Bank Staff Association and Another, (2000) 5 SCC 65 which is apposite in the circumstances of this case:

“16. Now what are the requirements of principles of natural justice, which are required to be observed? These are:(1) a workman should know the nature of the complaint or accusation; (2) an opportunity to state his case; and (3) the management should act in good faith which means that the action of the

management should be fair, reasonable and just.....

17. It is no point laying stress on the principles of natural justice without understanding their scope or real meaning. There are two essential elements of natural justice which are: (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements these two principles of natural justice have been expanded, e.g., a party must have due notice when the Tribunal will proceed; the tribunal should not act on irrelevant evidence or shut out relevant evidence; if the tribunal consists of several members they all must sit together at all times; the tribunal should act independently and should not be biased against any party; its action should be based on good faith and order (sic) and should act in just, fair and reasonable manner. These in fact are the extensions or refinements of the main principles of natural justice stated above.

18. The Bank has followed the requirements of clause 16 of the Bipartite Settlement. It rightly held that Dayananda has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contended that

he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days of the notice as required in clause 16 of the Bipartite Settlement.”

25. Meaningfully read, the learned Single Judge was of the view that even though the arrogant and rude behaviour is a serious misconduct, the punishment that was inflicted upon the appellant was that of withholding of one increment with a clear warning that he should conduct himself properly in future.

26. There is no doubt to the proposition of law that if in a given situation, the exigencies of administration require to enforce decorum and to ensure probity the employer is within its right to transfer an employee.

27. The facts also demonstrate, as has been noted by the learned Single Judge that the appellant all through intended to comply with the transfer orders. He had not protested against the same on any ground. He had asked for advance allowance which was allowed. He had booked his railway tickets. It appears that it was only when he was asked to vacate the official accommodation that he decided to challenge the same along with the punishment order.

28. It may be true that the penalty of termination of service was not preceded by an inquiry, but that does not mean that the penalty is vitiated. If a delinquent questions a factual allegation against him, only

then an inquiry has to be held for the reason the fact asserted has to be proved. But if no fact is disputed, nothing requires to be proved. If a memorandum is issued to show cause as to why action be not taken for an alleged wrong and if the wrong is admitted, we see no scope for a penalty not to be inflicted.

29. It assumes importance that pursuant to the memorandum dated May 30, 2002, the appellant admitted the acts of misdemeanour alleged against him but citing domestic problems pleaded for a lenient view to be taken. Taking a lenient view a penalty of forfeiting one increment was levied but with a warning that appellant should not indulge in any act of misdemeanour. The appellant was not chastened. Securing a let off with a minor penalty he started playing truants. The fact of appellant defying lawful orders by not reporting for duty at Tamil Nadu in spite of receiving advance in sum of ₹21,000/- is not in dispute. We cannot also lose sight of the fact that the appellant continued to occupy the official residence at Sarojini Nagar for 8 years without paying any license fee and ₹8,36,528/- are due from him as damages besides water and electricity charges in sum of ₹39,996/-.

30. As of today, the matter can be looked at from another angle. If the penalty of termination of service is to be set aside, consequential directions would be required to be issued. Had appellant continued to be in service he would have superannuated even otherwise a few years ago. The period interregnum appellant's services being terminated till his notional reinstatement would be required to be treated as per an order to be passed, and which could be: applying the principle of 'no work no pay', no wages to be paid. In other words it would be an

empty formality to set aside the penalty on technical grounds and permitting the disciplinary authority to hold an inquiry after issuing a charge sheet.

31. The conduct of the appellant was rightly commented upon by the learned Single Judge as disentitling him to any relief.

32. Accordingly, the appeal is dismissed but without any orders as to costs.

(V.KAMESWAR RAO)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

NOVEMBER 08, 2013

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