

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision : 28.2.2019

(1) CWP-9836-2013 (O&M)

Ashok Kumar Chopra

..... Petitioner

Versus

Union of India and others

..... Respondents

(2) CWP-24251-2012 (O&M)

Union of India and others

..... Petitioners

Versus

**Central Administrative Tribunal,
Chandigarh Bench, Chandigarh
and another**

..... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH**

**Present:- Mr. Dhiraj Chawla, Advocate
for petitioner in CWP-9836-2013 and
applicant-respondent No. 2 in CWP-24251-2012 .**

**Ms. Puneeta Sethi, Advocate
for the petitioners in CWP-24251-2012 and
for respondents in CWP-9836-2013.**

KULDIP SINGH, J.

**This order shall dispose of above mentioned two writ petitions
bearing No. CWP-9836-2013 titled as 'Ashok Kumar Chopra Versus
Union of India and others' and CWP-24251-2012 titled as 'Union of
India and others Versus Central Administrative Tribunal, Chandigarh**

Bench, Chandigarh and another'. Both the petitions arise out of common orders dated 30.4.2012 (Annexure P-4) and 22.5.2012 (Annexure P-5) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, (for short 'the Tribunal') whereby with the majority of 2:1, impugned order dated 22.11.2010 (Annexure A-1) terminating the services of the applicant-petitioner namely Ashok Kumar Chopra was set aside and applicant-petitioner was ordered to be taken back in services with all consequential benefits without back wages for the period he remained out of service on the principal of '*No Work No Pay*'.

The facts of the case are that the applicant/petitioner-Ashok Kumar Chopra, retired from Indian Air Force from 31.5.2002. He was appointed as Assistant Central Intelligence officer Grade-II vide letter dated 16.2.2009 on temporary basis (Annexure A-2). He worked from March 2009 to 22.1.2010 when his services were terminated by invoking sub Rule 1 of Rule 5 of Central Civil Services (Temporary Services) Rules 1965. This was done by respondents on the basis of anonymous complaint by holding discreet inquiry. Applicant-petitioner was issued a legal notice dated Annexure A-3 to which he received reply dated 27.12.2010, in which it was mentioned that the integrity of the applicant-petitioner was doubtful and was not up to the mark. Thus, allegations cast stigma on the applicant-petitioner and he cannot be punished without holding proper inquiry as per Article 311 of the Constitution of India.

Respondents-UOI in the reply took the plea that the applicant-petitioner was on probation for a period of two years. According to the

terms and conditions of the appointment letter, his services could be terminated by giving him one month salary. His services were terminated on the basis of written complaint of the passenger, on verbal complaint of Air Port Authority, his quarreling with the passenger for gratification, acting in ignorance of immigration norms, complaint of supervisory officer in writing and the inquiries made thereafter on these complaints (Annexure R-4 and R-5, respectively). It was further pleaded that the Intelligence Bureau does not display the name of the office board outside or inside the office but the applicant-petitioner had displayed the same outside of his residence which is against the norms of the Intelligence Bureau. There was no need to associate him in the inquiry. It was also alleged in the reply that the integrity of the applicant-petitioner was not upto the mark. Applicant-petitioner was posted at Rajasansi Airport, Amritsar and respondents-UOI was getting regular complaints about his misbehavior with the passengers and demanding gratification. It was further pleaded that the government employee who is corrupt and ill- behaved and whose conduct is against the department may not be granted any relief.

A Bench of the Tribunal heard the matter and vide judgment dated 30.4.2012 (Annexure P-4), a judicial Member of the Tribunal quashed the order dated 22.11.2010 (Annexure A-1) terminating the services of the applicant-petitioner and ordered that the applicant-petitioner be taken back in service with all consequential benefits but without back wages for the period, he remained in service on the principal of '*No Work No Pay*'.

However, it was also made clear that this will not be taken as bar for

proceeding against the applicant-petitioner for inquiring into the allegations made against him as per the Rules. However, the Administrative Member of the Tribunal disagreed with the said finding and the consequently the matter was referred to the third Member of the Tribunal, who agreed with the view taken by the Judicial Member. Consequently the application was allowed by the majority of 2:1.

We have heard learned counsel for the parties and gone through the case file.

It comes out from the pleadings of the parties as well as the reply to the legal notice dated 27.12.2010 (Annexure A-3) that it is specifically stated that there were allegations regarding the integrity of the applicant-petitioner. According to applicant-petitioner, the stand of the department-UOI in the reply is that there was written complaint of the passenger, verbal complaint of the Air Port authorities, complaint of the Supervisory Officer in writing and the inquiries made thereafter on these complaints i.e., Annexures R-4 and R-5, respectively. It was also alleged that he was quarreling with the passengers for gratification and acting in ignorance of immigration norms. Now coming to the impugned order dated 30.4.2012, passed by Central Administrative Tribunal, Chandigarh Bench, department-UOI has not mentioned any reason for termination of services under Sub Rule 1 of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965. However, it is established law that though the order of termination may be simpliciter termination but the Court can always lift the veil to see what are the reasons for termination of the service. In this regard

reference can be made to the authorities of the Apex Court in *1993 (3) SCT 621: 1990(3) SCC 504*, titled as 'Ram Ekbal Sharma vs. State of Bihar and another' and *2016 (1) SCT 1 : 2015 (9) JT 363* titled as 'Ratnesh Kumar Choudhary vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others' and *2013 (1) SCT 387* titled as 'State Bank of India and others vs. Palak Modi and another' and *1999 (2) SCT 600* titled as 'Secretary Haryana State Electricity Board vs. Suresh' and further the authorities of the Division Bench of this Court in *1994 (1) SCT 286*, titled as 'Surinder Singh versus State of Haryana and others'; *2018 (3) Law herald 2334*, titled as 'Ravinder Singh versus High Court of Punjab and Haryana, Chandigarh'.

Even during the period of probation if there are allegations, the inquiry is must and when the order is stigmatic alleging misconduct, inquiry under Article 311 (2) is necessary as held in the authority of the Apex Court in *1984 AIR (SC) 636*, titled as 'Anoop Jaiswal versus Government of India and another'.

In the present case, in the written reply as well as in the reply to the legal notice, allegations of receipt of complaints have been made and it is also alleged that the inquiries were also held against applicant-respondent No. 2. Once, it is admitted that there were complaints and inquiries were held which were probably either discreet or preliminary inquiries, then it was imperative for the department-UOI to hold a regular inquiry so as to give an opportunity to the employee to defend his case even though employee may be on probation. Had the respondent taken the simple stand

that the work and conduct of the applicant was not satisfactory, therefore, he was discharged/terminated, the things would have been different. Once, the complaints and the inquiries are admitted, the regular inquiry was required to be held before terminating the services of the petitioner. The Tribunal has by majority taken a correct view of the matter.

We find that there is no illegality or infirmity in the impugned orders dated 30.4.2012 (Annexure P-4) and 22.5.2012 (Annexure P-5) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh. So far as the claim of the applicant-petitioner for back wages is concerned, the applicant-petitioner did not work during the intervening period and he was rightly declined the back wages for the said period.

Consequently, both the petitions are dismissed.

A photocopy of this order be placed on the connected file.

(RAJIV SHARMA)
JUDGE

(KULDIP SINGH)
JUDGE

28.2.2019

preeti

Whether speaking / reasoned
Whether Reportable:

Yes/No
Yes/No