

Chief Engineer and another

Vs

K. Raman

Civil Appeal No. 10219 of 1996

(B. P. Jeevan Reddy, K. S. Paripoornan JJ)

08.08.1996

JUDGEMENT

B. P. JEEVEN REDDY, J :-

1. Leave granted.

2. This appeal is preferred against the judgment of a learned single member (administrative member) of the Tamil Nadu Administrative Tribunal allowing the Original Application filed by the respondent.

3. The respondent was a Jeep Driver in the Public Works Department of State of the Tamil Nadu. He applied for leave from 1-3-1984 to 31-3-1988 on the ground that he has to look after his ailing mother and his family properties. He was granted earned leave from 1-3-84 to 31-3-84 and leave on loss of pay from 1-4-84 to 31-3-88. Since he did not join duty after expiry of leave, it appears that on 12-11-1988, he was asked to join duty. He reported to duty on 27-11-88 and according to the respondent, he was admitted to duty on 6-12-88.

4. On 2-12-1988, an order was passed by the Executive Engineer stating that the respondent must be deemed to have resigned from service with effect from 1-4-1984. The respondent challenged the said order before the Tamil Nadu State Administrative Tribunal in O. A. No. 282 of 1989. The Tribunal held that since the respondent was admitted to duty pursuant to the letter calling upon him to join duty, the respondent was entitled to join duty on 6-12-88. So far as the order dated 2-12-88 is concerned, the Tribunal quashed the same on the ground that it was passed without holding a regular enquiry as required by rules and the principles of natural justice. After reinstating the respondent as directed by the Tribunal, the appellant issued a memo of charges upon him. He was also suspended pending enquiry and a regular disciplinary enquiry held. The gravamen of the charges was that having obtained leave on the grounds aforesaid, the respondent left the country for working in a foreign country without obtaining the permission of the department. The enquiry officer held the charges established. The report of the enquiry officer was communicated to the respondent to which he submitted his explanation. The Superintending Engineer, after considering the entire material, imposed the punishment of compulsory retirement by order dated 14-10-91 with effect from 31-10-91.

5. The respondent challenged the order dated 14-10-1991 before the Tamil Nadu Tribunal in O. A. No. 2386 of 1992. The learned Administrative member quashed the order of compulsory retirement on the only ground that in view of the earlier order of the Tribunal dated 11-4-1990 in O. A. No. 2 of 1989, it was not permissible for the appellants to hold the disciplinary enquiry. The learned

member opined that inasmuch as the earlier order of the Tribunal held that the respondent was entitled to join duty on 6-12-88, his joining duty on 6-12-1988 was perfectly in order. The learned Member further opined that the reference in the said order to the failure on the part of the appellants to follow the procedure prescribed for imposing punishment was only incidental and that the said order did not also grant the permission to take disciplinary proceedings against the respondent. Accordingly, the learned Member set aside the order dated 31-10-91 and made certain directions regarding past service.

6. We have carefully read the earlier order of the Tribunal. In our opinion, the main ground on which the Tribunal has quashed the order dated 1-4-88 was that it was passed without following the procedure prescribed by rules and in violation of the principles of natural justice. It is true that the order also observed that in view of the appellant's letter calling upon the respondent to join duty, the respondent was entitled to join duty on 6-12-88., but that circumstance has absolutely no relevance on the competence of the disciplinary authority to hold a regular disciplinary enquiry on the charges aforesaid viz., obtaining employment in a foreign country without obtaining the permission of the department. Even if it is held that the respondent was admitted to duty on 6-12-88, that fact does not in any way disentitle the disciplinary authority from holding a disciplinary enquiry on the aforesaid charges. We are also of the opinion that the learned Member was not right in observing that inasmuch as the earlier order of the Tribunal did not grant any permission to the appellants to hold a disciplinary enquiry, no such enquiry could have been held. For holding a disciplinary enquiry according to rules, no permission of the Tribunal was required. The earlier order declaring that respondent must be deemed to have resigned from service with effect from 1-4-1984 was set aside, as stated above, on the ground that it was passed without holding an enquiry as per Rules and in violation of the principles of natural Justice, it did not bar a disciplinary enquiry according to Rules and the principles of natural justice.

7. Since the only ground on which the learned Administrative Member has set aside the order dated 14-10-91 is found unsustainable, the appeal is liable to be allowed and is accordingly allowed herewith. The order of the Tribunal is set aside. There shall be no order as to costs. Appeal allowed.