

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.210/00765/2018

Dated this Tuesday the 14th day of January, 2020.

Coram: Dr.Bhagwan Sahai, Member (Administrative)
Ravinder Kaur, Member (Judicial).

Mrs.Jagriti Gupta,
Labour Enforcement Officer
(Central), Mumbai.

Residing at:

Type III/B, Bldg. No.63,
Flt No.567, RCF Colony,
Chembur, Mumbai - 400 071.

.. Applicant.

(By Advocate Shri Vicky Nagrani).

Versus

1. Union of India, through
the Secretary,
Ministry of Labour of Employment,
Shram Shakti Bhavan, Rafi Marg,
New Delhi - 110 001.
 2. The Additional Secretary,
Ministry of Labour of Employment,
Shram Shakti Bhavan, Rafi Marg,
New Delhi - 110 001.
 3. Chief Labour Commissioner (Central),
Shram Shakti Bhavan, Rafi Marg,
New Delhi - 110 001.
 4. The Deputy Chief Labour
Commissioner,
Shram Raksha Bhavan,
Vasantrao Naik Marg,
Opp. Priyadarshani Bldg.,
Chunabhatti, Sion,
Mumbai - 400 022.
- .. Respondents.

(By Advocate Shri R.R. Shetty).

Order reserved on : 19.09.2019

Order delivered on : 14.01.2020.

O R D E R**Per : Dr.Bhagwan Sahai, Member (A) .**

In this O.A., filed on 17.12.2018, Mrs.Jagriti Gupta seeks quashing and setting aside of her termination order dated 08.11.2018 with all consequential benefits and direction to respondents to reinstate her in service with immediate effect and to release subsistence allowance to her @ 75% from 21.07.2018 and @ 90% from 21.10.2018 as per rules till her suspension order is revoked. Alternatively, she seeks direction to the respondents to place her under suspension and review it after completion of 90 days and till a final decision is taken regarding the disciplinary proceedings. She also seeks cost of this application from the respondents.

2. Summarized facts:

2(a). The applicant has stated that by order dated 06.01.2017 (Annex-A-2) she was appointed as Labour Enforcement Officer on probation for two years from the date of her joining and her service was liable for termination without any notice and without assigning any reason during period of the probation and her service was also liable for termination by giving one month's notice. She joined on 30.01.2017 in the office of Deputy Chief Labour Commissioner, Shram Raksha Bhavan,

Chunabhatti, Sion, Mumbai. There was no complaint against her during first 15 months of her service.

2(b). On 20.04.2018 CBI (ACB) conducted a raid at the office of Deputy Chief Labour Commissioner, Mumbai and a case was registered against the Deputy Labour Commissioner and three others, including the applicant under Sections 7 and 12 of Prevention of Corruption Act, 1988 and Section 120(b) of IPC.

2(c). An FIR was lodged by CBI (ACB) and she was under detention for more than 48 hours. By order dated 15.05.2018 she was suspended till further orders with effect from 20.04.2018. The suspension was extended for further 90 days from 26.07.2018. But after completion of those 90 days her suspension and payment of subsistence allowance were not reviewed and she was issued the order dated 08.11.2018 terminating her service after a period of one month from service of that order on her (Annex-A-1).

2(d). She filed an appeal against the order on 03.12.2018 (Annex-A-6). The applicant herself has further stated that once the order of termination is passed, there is no remedy of preferring an appeal but in her appeal she requested to consider it and pass an order within 10 days, otherwise she would seek judicial intervention. Therefore, this O.A. has been filed.

3. Contentions of the parties:

In the O.A. and during arguments of her counsel on 19.09.2019, the applicant contends that

3(a). the order dated 08.11.2018 has been passed without following principles of natural justice and in violation of Article 311(2) of the Constitution. From that order, it is clear that it is not a simplicitor termination but is punitive and stigmatic termination, which could not have been passed without providing her an opportunity to defend herself;

3(b). the termination order has been issued under Rule 5(1) of CCS (Temporary Services) Rules, 1965 but that rule is not applicable in her case. The Rule 5(1) stipulates that - the services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant, the period of such notice shall be one month and if the service is terminated forthwith, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his services,

or the period by which such notice falls short of one month.

Thus the order of termination issued by the respondents under Rule 5(1) of CCS (Temporary Services) Rules, 1965 should not have mentioned any reasons but in that order allegation of misconduct has been mentioned against her and it has also been stated that continuation of her suspension is not proper as she is not fit to continue in Government service and it would meet the ends of justice if her service is terminated. Therefore, the order of the respondents is contrary to above Rule 5;

3(c). the service of the applicant has been terminated based on alleged misconduct in case RC No.BA 1/2018/A0011 registered by CBI (ACB), Mumbai. The above mentioned mention in the termination order is without providing opportunity to her to defend by conducting disciplinary proceedings against her; and

3(d). the termination order is also in violation of Article 320(3) of the Constitution because she was appointed on recommendations of UPSC and, therefore, before terminating her service, the respondents ought to have sought advice of UPSC under Article 320(3).

In support of the case the applicant has relied on two caselaws:

(i). Apex Court decision in case of **Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Kolkata and others**, decided on 10.02.1999 (1999) 3 SCC 60, holding that stigma may be inferable from references quoted in the termination order though the order itself may not contain anything offensive and the termination order is bad if it shows stigma but no regular inquiry has been conducted. In the case of the present applicant also the termination order is stigmatic and no disciplinary proceedings were held against the applicant.

(ii). Delhi High Court decision dated 16.09.2014 in **Writ Petition @ No.2551/2014 in case of Maneesh Kumar Vs. Commissioner of Police and another** holding that the order under challenge was stigmatic and although the petitioner therein might have been involved in extremely serious criminal case and the respondents may be fully justified in taking action against him but the respondents did not take action in accordance with law because details of FIR registered against the applicant therein were mentioned and it was further stated that department could not retain a person with criminal instinct, etc. In view of that the impugned order terminating service of the petitioner therein was set aside and the matter was

remanded back to the respondents to take appropriate action by following due procedure prescribed under the Delhi Police Act and rules thereunder.

In reply and arguments of their counsel on 19.09.2019, the respondents contend that -

3(e). the impugned order dated 08.11.2018 has been passed under Rule 5(1) of CCS (Temporary Services) Rules, 1965 by giving one month's notice to the applicant in lieu of wages as per terms of her appointment, which clearly gave power to the respondents to terminate her service by giving one month's notice or pay in lieu of that;

3(f). the applicant got involved in a bribery case along with other officers of the Department, she was in custody for more than 48 hours, so was placed under suspension and, therefore, the termination order was well within the authority of the respondents. Therefore, the O.A. should be dismissed with cost;

3(g). the applicant's appointment was temporary, she was on probation for two years and was liable for termination at any time by giving one month's notice by either side. In pursuance of DOPT OM dated 07.01.2004 regarding order of suspension made or deemed to have been made the applicant's suspension was to be reviewed by the Competent

Authority. Accordingly her suspension was reviewed and was extended for further 90 days;

3(h). as per Rule 5 of the above rules, and for any misconduct under provisions of CCS (CCA) Rules, 1965, a temporary Government servant can be terminated without giving any reason after observing the prescribed procedure;

3(i). the applicant's termination order is not stigmatic and her service has been terminated simplicitor because of which she is free to again compete for any appointment for a Government job as she has not been dismissed or removed from service. Therefore, the O.A. is without any merit and should be dismissed.

3(j). To support their contentions, the respondents have relied on two caselaws:

(i). Bombay High Court decision dated 16.02.1956 in case of **Shrinivas Ganesh Vs. Union of India** in which it was held that if the Government does not choose to dispense with service of a temporary servant but wishes to impose punishment upon him by dismissing or removing him, then the case would be on the same footing as in a case of permanent Government servant and such punishment should not be inflicted unless the Government servant is afforded safeguards provided by Article 311 i.e. principles of natural justice. Therefore,

(Central, Group 'B' Gazetted post) in the organization of Chief Labour Commissioner (Central). As per terms and conditions in that order in addition to others, her appointment was temporary and was liable to termination at any time by one month's notice given by either side i.e. appointing authority or the appointee. She was to be on probation for two years from the date of joining on the post which may be extended at the discretion of the Competent Authority or she may render herself liable for discharge from the post of Labour Enforcement Officer (Central) if she does not complete the period of probation satisfactorily.

4(c). Accordingly she joined on that post on 30.01.2017. Subsequently due to her involvement along with other officers in CBI (ACB) Case No.RC BA1/2018/A0011, she was suspended and before conclusion of the criminal proceedings she has been terminated under Rule 5(1) of the CCA (Temporary Services) Rules, 1965 vide impugned order dated 08.11.2018 and as per terms and conditions of her appointment order.

4(d). There is no doubt that as per rules and terms and conditions of her appointment, the respondents are competent to terminate the applicant during the probation even without

the appeal was dismissed but in view of controversy about the medical certificate of fitness, the case was recommended to the respondent authorities to avail his services if possible.

(ii). The Constitution Bench decision of Apex Court dated 01.11.1957 in **Civil Appeal No.65/1957 in case of Parshotam Lal Dhingra Vs. Union of India and R.L. Khuller (Intervener)** in which it was held that protection under Article 311 of the Constitution is not available when termination does not involve imposition of major penalty by reduction in rank and the appeal was dismissed with cost.

In view of this the O.A. should be dismissed.

4. Analysis and conclusions:

4(a). We have carefully perused the contents of the OA, reply of the respondents and arguments of both counsels. Based on the careful consideration of the O.A. and submissions of the parties, our analysis of the case is as follows:

4(b). The applicant was issued a provisional appointment by order dated 06.01.2017 issued by the office of Chief Labour Commissioner (Central), Ministry of Labour and Employment, Government of India to the post of Labour Enforcement Officer

assigning any reason. However, as contended by the applicant, the impugned order dated 08.11.2018 terminating her service is not an order simplicitor. It has mentioned about her involvement in criminal conspiracy, demand of illegal gratification, abetment, she being kept under custody for more than 48 hours, then her suspension, etc. In fact mention of these details in the order have rendered it stigmatic. As per the clear position under the relevant applicable rules and the views taken in the caselaws cited by the parties, in case service of a probationer is not terminated by a simple order without assigning any reason and is done in a manner as per the present impugned order, such order cannot be issued without providing opportunity to the concerned employee to defend himself / herself through disciplinary proceedings.

4(e). In the present case, the respondents did not conduct any disciplinary proceedings against the applicant and in such a situation, passing of the stigmatic order against her was not as per the prescribed procedure under the rules and, therefore, it is bad in law.

4(f). In view these facts of the case, without expressing any opinion on the merits of the case, in our opinion it is necessary to set aside the

impugned order and remand the case back to the competent respondent authority to pass the order afresh as per stipulations under the applicable rules and prescribed procedure.

4(g). The period from the date of impugned termination order i.e. 06.01.2017 till her reinstatement, may be treated as of suspension.

5. Decision:

The O.A. is allowed. The impugned order dated 08.11.2018 is set aside and the case is remanded back to the competent respondent authority for issuing the order afresh as per the stipulations under the applicable rules. No costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

JD
20/01/20