

14
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1568/2001

Wednesday, this the 09th day of October, 2002

Hon'ble Shri Shanker Raju, Member (J)

Sh. ShriBhagwan aged about 34 years
s/o Sh. Maruram
r/o Canteen, Haryana Bhawan
Copernicus Marg, New Delhi-1

..Applicant

(By Advocate: None)

VERSUS

1. The Director
Navodaya Vidyalaya Samiti
30 Kailash Colony, New Delhi
2. The Dy. Director
Navodaya Vidyalaya Samiti
Chandigarh.

..Respondents

(By Advocate: Shri S.Rajappa)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 2.11.2000 whereby his services have been terminated under Rule 5(1) of the CCS (Temporary Service) Rules, 1965 as well as order dated 18.5.2001 whereby his representation has been rejected. He seeks reinstatement with all consequential benefits.

2. Applicant has served Indian Army for about nine and half of years and was discharged and subsequently appointed as Trained Graduate Teacher (English) in Navodaya Vidyalay Samiti. On account of an incident where the applicant and the few of his colleagues has consumed alcohol/wine in housemasters room and terrorised the students, a joint explanation was sought. Two other teachers were placed under suspension, whereas the applicant's services have been terminated under Rule 5(1) of the CCS (TS) Rules ibid.

(15)

As per the terms and conditions of his appointment, he was made entitled to claim a sum equivalent to pay and allowances for the period of notice.

3. Applicant preferred statutory representation which was also rejected, giving rise to the present OA.

4. Neither the applicant nor his counsel is present, the OA is disposed of in terms of Rule 15 of the CAT (Procedure) Rules, 1987. Shri S.Rajappa, learned counsel for respondents states that he does not want to file an additional affidavit.

5. Applicant, in his OA, states that being a probationer, the respondents have misused the provisions of Rule 5(1) of the CCS (TS) Rules and the termination order being stigmatic and found on specific misconduct of the applicant of his involvement in consumption of wine, without resorting to a reasonable opportunity to show cause, the termination is violative of Article 311 of the Constitution of India.

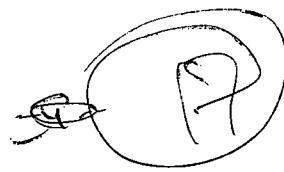
6. It is also stated that in similar circumstance, who have been involved in that incident have been suspended and disciplinary proceedings have been initiated against them which smacks of hostile discrimination and violative of Articles 14 and 16 of the Constitution of India.

(12)

7. It is further stated, in rejoinder on the basis of the documents annexed thereto, that his performance was founded to be good on supervision by the Inspector in 2000 and the applicant has never been communicated in writing any displeasure, warning or memo and he has been terminated without hearing. It is stated that the conduct of the applicant and his performance through out his service was excellent, unblemished and the various letters transpires that the students as well as their parents were neither made any complaint against him nor he was involved in any of the allegations of misbehaviour with girl students.

8. On the other hand, learned counsel for respondents rebutted the contentions and stated that apart from the incident which had taken place on 14.9.2000, which was not made basis of termination. Applicant was also indulged in behaviour unbecoming of Teacher of residential institution as he used to beat students and to enter girls dormitories during odd hours. There, on the complaints of parents, Joint Director(Acad.), NVS, New Delhi personally visited Jawahar Navodaya Vidyalaya Kargil and found the applicant guilty of immoral acts. From the complaint it transpires that the performance of the applicant was undeserved. Despite being verbal warned by the Principal, in the past, he has not improved upon.

9. It is further stated that as per the terms and conditions of his appointment as the applicant was on probation, his case was placed before the DPC which has not found him fit to be retained him in service.



It is denied that the order is founded on specific misconduct or stigmatic. It is stated that DPC has considered the ACRs of the applicant and is average performance and on that basis his work, conduct and performance of last two years was not satisfactory, resulting him a simple termination which is as per the rules and is sustainable in the eyes of law.

10. I have carefully considered the rival contentions of the parties and perused the material on record. I have carefully gone through the records. As per the directions of appointment applicant was appointed as TGT (English) on probation for a period of two years w.e.f 22.2.1999 with stipulation that the same would be extended more than double and failure to complete the period of probation satisfactorily the competent authority has within his rights to discharge him from service.

11. Complaints have been filed against the applicant for his unsatisfactory performance, and he was also involved in an incident of consumption of liquor in School premises. On the complaint of the parents of the students, Joint Director (Acad.), NVS visited the School and after an enquiry the work and conduct of the applicant was founded unsatisfactory, though he has been advised verbally not to indulge in unwanted activities but without any avail. As the applicant was on probation, and as per the terms and conditions a decision was to be taken by the competent authority to extend the probation or otherwise, the matter was placed before the Departmental Promotion Committee, who after evaluating the overall performance

(B)

of the applicant, on the basis of his record, observed him to be unfit and in terms of appointment, his services have been terminated.

12. I do not find from the order of appointment and preceding circumstances that the same is stigmatic in any manner. Moreover, the probationer has no right to continue and on the basis of the stipulation of the terms and conditions that his services can be dispensed with on unsatisfactory performance, the same does not suffer from any legal infirmity. Moreover, there is nothing on the record to establish that the alleged misconduct of the applicant has been gone into in an enquiry behind his back no finding has arrived at, and the respondents instead of conducting an enquiry, they have not desired to continue the applicant against whom there were complaints of misbehaviour and unsatisfactory performance the same would be only motive and in that event the termination would be neither stigmatic nor founded on misconduct and would be a simple order of termination.

13. As held by the Apex court in Dipti Prakash Banerjee v. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta, JT 1999(1) SC 396 where the following observations have been made:

"As to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of the termination are the motive or foundation. [Para 19]

If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular

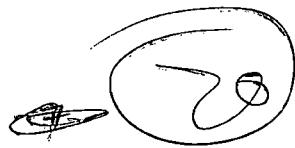
(18)

departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the inquiry was not held, no finding were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

14. If one has regard to the aforesaid ratio, and in the light of the decision of the Apex Court in **Khasdar UGS Sanstha & Ors. Shailaja Shivajirao Patil v. President, Hon. L.**

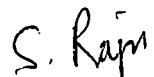
JT 2002(1) SC 431, if termination is during probation as per the stipulation contained in the appointment letter on unsatisfactory performance, the same does not suffer from any illegality.

15. I am of the considered view that the termination of the applicant is resorted to by the respondents and is in accordance with the terms and conditions of the appointment, and as the applicant has not successfully completed the probation period and his performance was not found satisfactory, the order of termination is a simple without being founded on a specific misconduct, the incident of 14.9.2000 was only a motive and apart from this having regard to the complaints made by the parents of the students against the applicant and his continued unsatisfactory performance, found him unsuitable for the job for which the respondents have passed an order of termination as per the conditions of service, without making any further inquiry into the proceedings.



16. In so far as the plea of discrimination that others who have been proceeded in a disciplinary proceedings is concerned, in absence of any particulars of their status, the applicant has failed to establish that they are at par and in that event, I do not find any violation of Articles 14 and 16 of the Constitution of India.

17. In the result and having regard to the reasons recorded above, I do not find any infirmity in the orders passed by the respondents. The OA is found bereft of merit and is accordingly dismissed. No costs.



(Shanker Raju)
Member (J)

/rao/