

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2700/2001

10

This the 30th day of July, 2002

HON'BLE SH. KULDIP SINGH, MEMBER (J)

Nawal Kishore Pal S/o Shri Ram Kishan Pal
Ex-Salesman-cum-Cashier
Rewa Canteen H.Q.31 Armd Division
C/o 56APO.

Residence Address

H.No. 470 Chik Mohalla,
Sadar Bazar, Jhansi(UP)

2. Charan Singh S/o Late Murlidhar
Ex-Salesman-cum-Cashier
Rewa Canteen H.Q.31 Armd Division
C/o 56APO.

Residential Address

Vill and Post Barata, (Jhansi)

... Applicants

(By Advocate: Sh. D.P.Sharma)

Versus

1. Union of India
through Secretary
Ministry of Defence
Govt. of India, New Delhi
2. The Chairman Rewa Canteen
H.Q.31 Armd Division C/o 56 APO.
3. The Core-Commander
21 Corps C/o 56APO
4. The General Officer Command
31 Armd Division C/o 56 APO.

Respondents

(By Advocate: Mrs. Avnish Kaur)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

The two applicants have filed this joint OA assailing the orders Annexure A-1-a and A-1-b dated 31.5.2001 vide which the services of the applicant have been terminated during the probation period as their services have not been found satisfactory. To challenge the same the applicants submitted that the applicants are the civil servants under the Ministry of Defence and they are entitled to similar treatment as other

ku

employees of the Defence Department are treated. It is further stated that the applicants had completed their 6 months probation period satisfactorily, therefore, they had got the status of permanent employee and as regards termination of services of applicants on payment of one month pay is illegal. It is further stated that the services have been terminated due to unsatisfactory work while no complaint was ever intimated to the applicant therefore without providing the opportunity of defence termination of services is illegal and is violative of provisions of Article 311(2) of the Constitution of India.

2. The OA is being opposed by the respondents. The respondents pleaded that as per the terms of appointment the probation period is for one year which has not been completed by the applicant satisfactorily so the appointment has been terminated. It is denied that the applicant has become permanent or they are entitled to the protection of Article 311 (2) of the Constitution of India. Rather their services are not permanent and they are at par with temporary servants who are on probation and accordingly their services are terminated.

3. Annexure A-2 is the appointment offer which shows their appointment was on probation for 6 months. But Annexure A-4 is the agreement which provides that the services of the employee can be terminated after giving 30 days notice or one months pay in lieu of thirty days notice without assigning any reasons. Schedule to the agreement which is at Annexure A-5 (page-18 of the paper book) shows that the applicant has been appointed on probation for one year w.e.f. 16.9.2000 and



schedule to Annexure A-4 which is at page-14 of the paper-book, also provides that the appointment was given w.e.f. 16.9.2000 for one year. Thus, as per agreement the appointment was to remain on one year probation till 15.9.2001 and since the services had not been found satisfactory. So the respondents are within their right to terminate the services of the applicant invoking the clause as enshrined in the schedule to the agreement between the applicant and the respondents.

4. Counsel for applicant also contended that even during probation the employee is entitled to certain protection and his services cannot be terminated arbitrarily or punitively without complying with the principles of natural justice. In support of contention respondents have quoted the judgment of the apex court reported in (2000) 3 SCC 239 VP.Ahuja vs. State of Punjab and others wherein it was observed as under:

"Protection against arbitrary termination - Held, a probationer like a temporary servant is also entitled to certain protection - His services cannot be terminated arbitrarily or punitively without complying with the principles of natural justice - Appellant's services terminated during probation period invoking terms and conditions of his appointment which permitted termination without notice - Termination order stating that the appellant "failed in the performance of his duties administratively and technically" - Besides, the affidavits filed in High Court and in the Supreme Court also indicated the background in which the appellant was terminated - Held, the order on the face of it was stigmatic and punitive - High Court was wrong in holding it as non-stigmatic - Termination order could not be passed without holding a regular inquiry - Termination - Punitive or simplicitor - Order if stigmatic - Departmental Enquiry - Natural Justice - Invocation of where termination contemplated on ground of failure in performance of duties."

ku

5. So relying upon the judgment counsel for the applicant submitted that in the case of V.P. Ahuja (supra) the allegations that the employee have failed in the performance of duties administratively and technically which was considered to be stigmatic. Similarly in this case also the services being not found satisfactory should be treated as stigmatic and the applicant should be given protection under Article 311 (2) of the Constitution of India.

6. From the perusal of this judgment the law as laid down is quite clear as it says that temporary servant is also entitled to certain protection and his services cannot be terminated arbitrarily nor can those services be terminated in a punitive manner. But in the said case Hon'ble Supreme Court after going through the affidavits filed by the parties before the High Court as well as before the Hon'ble Supreme Court found that the affidavits indicate the background the form in which the order of termination of services of the applicant came to be passed and then held that such an order which on the fact of it is stigmatic and could not have been passed without holding a regular enquiry and giving an opportunity of hearing. But in this case two affidavits filed by the applicant and the allegations levelled by the applicant in the OA do not show as to how the impugned order is stigmatic in nature. The impugned order on the face of it shows that the services of the applicant have been terminated as their services were not found satisfactory during probation period. So neither the order in question nor the allegations as levelled against the department indicate if the order is stigmatic in nature. There is no material on record which may prove that the impugned order is stigmatic if the fact that the services of the employee are not found satisfactory is to

Km


18 14

be treated as stigmatic then probably the significance of probation period is altogether lost and the concept of probation period becomes redundant to the service jurisprudence.

7. No other contention was raised by the applicant.

8. Examining from all the angles I find that the order in question is not at all stigmatic and cannot be quashed. I am of the view that the OA has no merits. Hence, the same is dismissed.

No Costs.


(KULDIP SINGH)
Member (J)

'sd'