

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 2878/2001

This the 6th day of June, 2002

HON'BLE SH. SHANKER RAJU, MEMBER (J)

In the matter of

Brahm Dev Prasad,
S/o Shri Paras Nath,
R/o - Vill - Chainpur, PO - Balapur
Distt - Gorakhpur (UP)

Corresponding Address

C/o Mr. Jaai Prakash
C-113, Jawahar Park, Devli Road
New Delhi - 62

.....Applicant

(By Advocate: Sh. U.Srivastava)

Versus

Union of India, thorough

1. The Director General Works
Directorate General of Works
Central Public Works Department
Nirman Bhavan, New Delhi.
2. The Superintending Engineer
Dekgu Central Circle, CPWD
New Delhi
3. The Executive Engineer
B-Mondal, CPWD
New Delhi

.....Respondents

(By Advocate: Sh. R.N.Singh proxy for
Sh. R.V.Sinha)

O R D E R (ORAL)

By Sh. Shanker Raju, Member (J)

Applicant impugns respondents order dated 28.8.99 whereby on account of remaining absent for a period of 6 years after becoming temporary servant his services have been terminated by publication in the newspaper.

2. Applicant who was earlier working as Beldar w.e.f. 1.1.83 was appointed as a temporary employee w.e.f. 12.1.93. After 3 months of his joining in April 1993, without any intimation

applicant abruptly absented himself and a telegram was sent to the applicant on 21.8.99 by the respondents. Instead of complying with the directions to join duties applicant sent a communication on 23.8.99. An order was passed by the respondents terminating his services. Applicant approached the Tribunal in OA-1969/99 and by an order dated 29.3.2000 as none was present for the parties, taking note of the order of termination OA was dismissed with liberty to the applicant to assail the impugned order in accordance with law giving rise to the present OA.

3. MA for condonation of delay has been filed by the applicant inter alia contending that earlier OA was dismissed when the lawyers were at strike and were abstaining from Courts. The fact of dismissal of OA-1969/99 had not come to the knowledge of the applicant. It is also stated that the applicant had come to know about the dismissal of the case only on 28.9.2001. It is stated that as the applicant is poor and was searching a job he used to communicate with his counsel regarding stage of the case on telephone.

4. It is further stated that applicant had fallen seriously ill and on receipt of the telegram from respondents on 21.8.99 he reported for duty by filing a representation as well as preferred an appeal against the order of termination which has not yet been disposed of by the respondents. It is stated that he filed an MA for amendment in OA-1969/99 on 16.5.2000 which was returned back by the Registry as the OA was disposed of. It is stated that the absence of the applicant was neither wilful nor unauthorised but was on account of his

illness his services have been terminated without complying with the principles of natural justice and is in violation of Article 311 of the Constitution of India.

5. Sh. Srivastava further stated that no information had been sent to him by the respondents and by placing reliance on a decision of the Apex Court in Union of India & others vs. Dinanath Shantaram Karekar & others India JT 1998 (6) 1 stated that if an official communication returns back with the remarks "not found" then same would not be treated as a valid service. It is stated that service as allegedly affected upon the applicant would not amount to a valid service. Sh. R.N.Singh appearing for the respondents objected to the maintainability of the OA on the ground of limitation. He placed reliance on a decision of the Apex Court in State of Karnataka vs. S.M. Kotraya and others 1996 SCC (L&S) 488 to contend that under Section 21 of the limitation AT Act, 1985 an application beyond one year from the date of cause of action is barred. It is stated that in an application for condonation of delay each days delay is to be explained which should be bonafide. In the context of the reasons given in MA for condonation of delay by the applicant it is stated that the reasons are not justifiable in view of the decision of the Constitutional Bench of Apex Court in S.S.Rathore vs. State of MP AIR 1990 SC 10. It is contended that the limitation is to be complied in its all rigour and merely because the liberty has been accorded to the applicant to assail his grievance this would not give a fresh cause of action to the applicant de hors the rules and it should be in accordance with law.

6. Sh. Singh on merits contended that applicant was appointed on temporary basis and merely after serving for three months he abruptly absented himself without any information and without sending any medical record. In response to an intimation to join his duties applicant had neither sent any application nor produced the medical record under CCS (CCA) Leave Rules, 1972. By resorting to leave rules it is contended that leave cannot be claimed as a right. It is the discretion of the authority to allow the same on being satisfied as to the genuinity of the illness. As the applicant has not accompanied his representation with medical record his resort to his illness as a ground of absence is an after-thought.

7. Sh. Singh regerring to the order of termination contended that being a temporary Govt. servant has no right to hold the post. His services can be dispensed with in accordance with the terms and conditions of the appointment if his performance has not been found satisfactory. As the order passed is a simple order of termination and is not founded on any misconduct the same would not be interefered.

8. I have carefully considered the rival contentions of the parties and perused the material on record. In so far as the limitation is concerned, I am of the considered view that the present OA is barred by limitation under Section 21 of the AT Act. Applicant whose earlier OA was dismissed on 29.3.2000 and his MA was filed subsequently on 16.5.2000 the knowledge about the dismissal of the case is to be deemed on 16.5.2000. The present petition which has been filed on 16.10.2001 after more than one and a half year from this date and in absence of a reasonable explanation of delay, having regard to Kotraya's

case (supra) applicant having failed to explain each days delay the limitation has started running w.e.f. 16.5.2000 and as envisaged under Section 21 of the Act ibid as the OA has been filed beyond stipulated period of one year, OA is not maintainable.

9. In so far as merits of the case is concerned, the apex court in Dipti Prakash Banerjee vs. Satendra Nath Bose, National Centre for Basic Sciences, Calcutta & others JT 1999 (1) SC 396 while dealing with a case of termination it has been observed by the Apex Court that if findings were arrived at in an inquiry as to misconduct, behind the back of the employee or without holding a regular departmental enquiry, the order of termination is passed and the same to be treated as 'founded' on the allegations and will be bad. But if the enquiry has not been held, no findings have been arrived at as to the misconduct of the officer and in pursuing and evaluating the circumstances preceding and attending to the order of termination no ^{be} ~~sub~~ ~~ema~~ is attached or it is found that the order of termination is not founded on a misconduct. The termination only on the ground of unsatisfactory performance as per the terms and conditions of the appointment would have to be treated as a simple order of termination without requiring an opportunity under Article 311 of the Constitution of India.

10. In the light of the aforestated decision, if the circumstances of the case are evaluated it transpires that the applicant who was a temporary employee as per Leave Rules cannot be accorded leave of more than three months at a stretch. Applicant who had abandoned his service for remaining absent for more than six years without informing the

department and without furnishing the medical record his performance after having been found^{un}satisfactory the order of termination cannot be treated as stigmatic or punitive. I hold that the order of termination is a simple order of termination based on the performance of the applicant. Being a temporary employee applicant has no right to continue in service and the termination has been resorted to as per the terms and conditions of the appointment, the same cannot be found fault with.

11. At this stage, learned counsel for the applicant Sh. Srivastava made a request to withdraw the petition and has sought directions to the respondents to dispose of his appeal. However, he has miserably failed to apprise as to when the appeal was tendered to the applicant and has also not attached the appellate memorandum with this OA. Moreover, in view of the clear stand of the respondents in their reply and keeping in view the provisions of Section 19(4) of the AT Act any proceedings pending after the admission of the case shall abate the request is rejected.

12. In the result, having regard to the reasons recorded above, OA is found bereft of merits and is also barred by limitation. The same is accordingly dismissed. No costs.

S. Raju

(SHANKER RAJU)
Member (J)

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