

(14)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 493/2001

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T.A. No.

DATE OF DECISION 29.11.2001

Smt. Lipika Dutta

....Petitioner

Shri D.R. Gupta

....Advocate for the
Petitioner(s)

VERSUS

UOI through Secretary
Ministry of Petroleum & Natural Gas,Respondent
Shastri Bhawan.

Shri K.R. Sachdeva

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
The Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan,
Member (J))

(15)

Central Administrative Tribunal
Principal Bench

O.A. 493/2001

New Delhi this the 29 th day of November, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tampi, Member(A).

Smt. Lipika Dutta,
W/o Dr. Samir Dutta,
House No.19, Pocket C-13,
Sector 3, Rohini. Applicant.

(By Advocate Shri D.R. Gupta)

Versus

Union of India through
Secretary,
Ministry of Petroleum & Natural Gas,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi. Respondents.

(By Advocate Shri K.R. Sachdeva)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

The applicant is aggrieved by the action taken by the respondents in issuing the order dated 6.3.2000 whereby her representation against her termination under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as 'the 1965 Rules), has been rejected by a non-reasoned order. She has also challenged certain other actions and orders of the respondents in not permitting her to resume her duty before the expiry of period of notice issued by Office Order dated 6.3.2000, in which it has been stated that she will stand struck off from the rolls of the Ministry with effect from the afternoon of 17th February, 2000 by which date, according to her, she had reported for duty.

2. The brief relevant facts of the case are that the applicant had worked as LDC from 26.12.1986 upto 28.12.1990 with the Union Public Service Commission (UPSC), after which, according to her, she was promoted as ad hoc Stenographer Grade 'D'. According to the learned counsel for applicant, the performance of the applicant was unblemished and she had rendered 3 years continuous service satisfactorily with the UPSC. Thereafter, she took the Stenographers Grade 'D' examination conducted by the Staff Selection Commission (SSC) and was selected as Stenographer Grade 'D' with the respondents, i.e. Ministry of Petroleum and Natural Gas. She had submitted her technical resignation from the post of LDC in UPSC and reported for duty with the respondents as Stenographer Grade 'D' on 1.3.1990. Shri D.R. Gupta, learned counsel has very vehemently submitted that before the impugned order dated 6.3.2000 was issued by the respondents, the applicant had thus rendered about 14 years service with the respondents. In the circumstances of the case, as the applicant had assumed the post of Stenographer Grade 'D' with the respondents only w.e.f. 1.3.1990, her previous service with the UPSC cannot be considered as continuous service with the Government. In any case, Shri K.R. Sachdeva, learned counsel has rightly pointed out that the UPSC has not been impleaded as a party in the present O.A.

3. According to the learned counsel for the applicant, the applicant had worked with the respondents w.e.f. 1.3.1990 to 17.2.2000 when her services were

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terminated, without holding any inquiry for the alleged act of misconduct for her unauthorised absence from duty which is punitive in nature and, therefore, not sustainable in law. Learned counsel has submitted that the applicant's husband was posted with the Govt. of Goa in Panjim. He has submitted that after she was married on 31.1.1991, she had availed of the leave sanctioned by the respondents permissible under the CCS (Leave) Rules. Similarly, learned counsel has submitted that due to her medical problems, she had taken leave in June, 1998 which was also duly sanctioned by the competent authority. On expiry of the leave, the applicant sought for extension of leave which the competent authority had neither sanctioned nor refused till 12.8.1998 and 3.9.1998 when she was advised to report for duty. Shri D.R. Gupta, learned counsel has submitted that as the applicant was not medically fit to resume her duties and was under treatment, she had requested the authorities to consider the matter and grant her leave and she assumed that her request would have been favourably considered and she continued to remain on leave till 1.4.1999 and resumed her duties only on 5.4.1999. Learned counsel has submitted that the Doctor had considered the applicant medically fit on 30.1.1999 and thereafter, the applicant had to proceed to Goa because of family problems, namely, her husband fell ill and then she fell ill and so on. According to her, she again fell ill and could not join her duties and continued to send applications for leave on medical grounds till January, 2000 when she was asked by the authorities to undergo ~~for~~ medical examination in Dr.

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R.M.L. Hospital to obtain a second medical opinion. This again she did not do on the ground of her not being medically fit to travel from Goa to Delhi. Thereafter, a Memorandum dated 12.1.2000 was served on her under Rule 5 (1) of the 1965 Rules giving her one month notice which, according to Office Order dated 6.3.2000 was served on her on 17.1.2000 and accordingly she stood terminated w.e.f. 17.2.2000.

4. Learned counsel for the applicant has very vehemently contended that the applicant had rendered more than 12 years continuous regular service when she should have been declared quasi-permanent with confirmation in which case she could not have been removed from service without invoking Government of India's Decision No. 5 under Rule 11 of the CCS (CCA) Rules, 1965. He has submitted that the Departmental action for unauthorised absence from duty, as prescribed in this Rule has not been taken by the respondents. According to him, the respondents have passed the impugned order of termination of service against the applicant in colourable exercise of powers under Rule 5(1) of the 1965 Rules. He has relied on Government of India's Decision No. 3 (ii) of Rule 25 of the CCS (Leave) Rules, 1972. These instructions have been issued by the DGP&T letter dated 5.10.1972 which provides that when a temporary Government servant applies for leave beyond the prescribed limit of extraordinary leave and the leave sanctioning authority is not satisfied with the genuineness of the grounds on which further leave has been asked for nor does it consider the grounds as exceptional, the leave cannot be granted, disobedience of

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which would render her liable for disciplinary action under the CCS (CCA) Rules, 1965. He has also relied on Para 7 of Chapter 19 of Swamy's Manual on Establishment and Administration (7th Edition), Page 209 which is a letter of the Government of India, Department of Posts dated 16.6.1991. He has further on the judgements of the Supreme Court in **Jagdish Mitter Vs. Union of India (AIR 1964 SC 449)** and **Karnataka State Road Transport Corporation and Anr. Vs. Manju Nath, etc. (2000 (4) SLR 539)**. According to the learned counsel for applicant, the probation of the applicant could not have been extended beyond the period of four years that is the double the normal period which he states is in accordance with Rules.

5. One of the main contentions of Shri D.R. Gupta, learned counsel is that if the applicant was unauthorisedly absent from duty or had overstayed the leave, the only course of action for the respondents was to initiate disciplinary action against her under the CCS (CCA) Rules, 1965 when she refused to rejoin duty. He has very vehemently submitted that in the afternoon of 16.2.2000, the applicant had reported for duty, stating also that she would henceforth work without interruption and with sincerity and devotion.

6. The respondents in their reply have submitted that although the applicant was on their roll from 1.3.1990 to 17.2.2000, she had not worked during this period as she was on leave for a period of approximately 2234 days and has been on unauthorised leave from

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10.8.1998. They have also submitted that a number of telegrams were sent to her informing that her request for extension of leave was not granted and she should report back for duty since the medical certificates produced by her were from the Hospital where her husband was working and the ailment mentioned therein was not life threatening. She was asked to present herself for second medical opinion in Dr. R.M.L. Hospital, on 13.12.1999 but this was also not complied with by her. Till the notice dated 12.1.2000 was issued under Rule 5(1) of the 1965 Rules, intimating that her services would be terminated w.e.f. 17.2.2000, she never approached the respondents to resume her duties. They have denied that the applicant had rendered more than 12 years continuous regular service and that it has been unblemished and satisfactory. Shri K.R. Sachdeva, learned counsel has stressed on the fact that the records will clearly show that the applicant was totally unconcerned ~~to~~ ^{to} her work and right from the beginning she was only interested in taking leave and she was, in fact, on leave for over six years. He has also submitted that at no time the applicant had rendered two years service continuously which was her ^{term} of probation under the Rules and in the circumstances, there was no question of being satisfied with her work. He has submitted that her termination under Rule 5(1) of the 1965 Rules can in no way be equated with imposition of major penalty against her under Rule 14 of the CCS (CCA) Rules, 1965. In the circumstances of the case, learned counsel has submitted that the provisions under Rule 11 of the CCS (CCA) Rules, 1965 relied upon by the applicant

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have no application to the facts of the case. He has submitted that although the applicant kept on producing the medical certificates from the same source again and again where her husband was employed ~~and~~ she refused to present herself before the Medical Board for second medical opinion on the ground that she was too ill and not in a position to travel. Yet when the notice for termination of her services was issued, she came to Delhi and met the senior officers to present her case personally. Shri K.R. Sachdeva, learned counsel has also drawn our attention to the fact that although the applicant has stated that she was willing to report back for duty in the afternoon of 16.2.2000 while her services were terminated on 17.2.2000, thereafter she never came back for duty and filed the case in the Tribunal more than one year later on 27.2.2001. According to him, this also shows that the applicant was not serious for rejoining her duties. He has also submitted that as per the DOP&T O.M. dated 19.5.1987, so long as no specific orders of confirmation or satisfactory completion of probation have been issued to a probationer, such person shall be deemed to have been continuing on probation. As per the clarification given by the DOP&T in its Note dated 15.12.1999, the concept of quasi-permanency has also been deleted from the purview of the 1965 Rules. In the circumstances, learned counsel has submitted that the applicant shall be deemed to have continued on probation as Government servant and accordingly, the termination of her services under Rule 5(1) of the 1965 Rules is valid.

Shri K.R. Sachdeva, learned counsel has relied on the

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judgements of the Supreme Court in **Union of India Vs. Behari Lal Sidhana** (JT 1997 SC 541) and **Chander Prakash Shah Vs. State of UP & Ors.** (JT 2000 (5) SC 181).

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. We have also perused the relevant records submitted by learned counsel for respondents.

8. From the documents on record filed by the respondents regarding the service of the applicant, it is noted that she has been on unauthorised leave since 10.8.1998 and had resumed duty only on 5.4.1999 and again remained absent from duty with effect from 15.6.1999. From her service record, it cannot, therefore, be stated that the view taken by the respondents, that she was not committed to her work and that her attitude towards the work right from the beginning is not satisfactory as she has not been regular in service, is not correct. It is also relevant to note that the notice of termination of her service under Rule 5(1) of the 1965 Rules was issued by Memo dated 12.1.2000 which was received by her on 17.1.2000, in which it has been clearly stated that she will stand terminated with the expiry of the period of one month of the receipt of the notice. Much emphasis has been placed on the letter written by the applicant dated 16.2.2000 that she was willing to report for duty in the afternoon of 16.2.2000, that is one day before the proposed termination of her service on 17.2.2000. We see force in the contention of Shri K.R. Sachdeva, learned

counsel that even after the receipt of termination order, the applicant had taken the matter quite causally while submitting that she would henceforth, work without interruption and with sincerity and devotion. We also note that the respondents have sent a number of communications, including telegrams informing her that she should report for duty, which has not been done. Learned counsel for respondents has pointed out that during her period of service with the respondents from 1.3.1990 she has not worked even a single year continuously till Office Order dated 6.3.2000 was issued. We do not also see any force in the submissions made by Shri D.R. Gupta, learned counsel that her service record with the UPSC was satisfactory, as the Commission has not been made a party in this application. In Behari Lal Sidhana's case (supra), it has been held that "since the respondent is only a temporary Government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a Government servant accused of defalcation of public money." While there is no charge of misappropriation of money or the like in the present case, ^{however}, the plea of the learned counsel for the applicant that if the applicant is reinstated in service and thereafter, if the respondents want ^{an} ^{re} inquiry against her for unauthorised absence, would not be in public interest as it is clearly seen from her service record from 1.3.1990 to 17.2.2000 that she was unauthorisedly absent

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from service for several years and had not shown any interest in her work. In the circumstances of the case, it is also clear from the documents on record that the applicant had also not appeared before the Medical Board of Dr. R.M.L. Hospital for second medical opinion, as asked by the authorities, ^{under part B} which action ₂ cannot also be held to be in accordance with the relevant Rules. In the present case, at no stage the applicant had been confirmed in the post of Stenographer Grade 'D' and no rule or instruction has been produced by the applicant to show that she has to be automatically confirmed in that post. Under Government of India, Ministry of Home Affairs DP&AR O.M. dated 19.5.1987, it is provided that as long as no specific orders of confirmation or satisfactory completion of probation have been issued to a probationer, such probationer shall be deemed to have continued on probation. In view of this specific provision contained in DOP&T O.M., the applicant cannot be deemed to have been confirmed in the post of Stenographer Grade 'D'. particularly taking into account her service records submitted by the learned counsel for respondents, which show that she had never completed two years of satisfactory probation during her service. In the circumstances, the judgement in **Manju Nath's** case (supra) relied upon by the learned counsel for the applicant will not assist her in the facts and circumstances of the case. In **Jagidsh Mitter's** case (supra) relied upon by the applicant, the Constitutional Bench of the Supreme Court has held as follows:

...It is, thus clear that every order terminating the services of a public servant who is either a

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temporary servant, or a probationer, will not amount to dismissal or removal from service within the meaning of Art.311. It is only when the termination of the public servant's services can be shown to have been ordered by way of punishment that it can be characterised either as dismissal or removal from service. It is also now settled that the protection of Art.311 can be invoked not only by permanent public servants, but also by public servants who are employed as temporary servants, or probationers and so, if a temporary public servant or a probationer is served with an order by which his services are terminated, and the order unambiguously indicates that the said termination is the result of punishment sought to be imposed on him, he can legitimately invoke the protection of Art.311 and challenge the validity of the said termination on the ground that the mandatory provisions of Article 311 (2) have not been complied with..."

In the present case, the impugned termination order dated 6.3.3000 is an order simpliciter and it does not amount to dismissal or removal from service within the meaning of Article 311(2). In the facts and circumstances of the case, we are unable to agree with Shri D.R. Gupta, learned counsel that there is an element of punitive proceedings against the applicant but as seen from the service records of the applicant, ~~that~~ her services were not satisfactory as she chose to be on unauthorised leave for long spells, in spite of intimation from the competent authorities to rejoin duty. As she had continued as a probationer during this period, we ~~will~~ ^{find} ~~not~~ that the exercise of power under Rule 5(1) of the 1965 Rules cannot be faulted and there appears to be no justification to interfere in the matter. Therefore, the judgement in Jagdish Mitter's case (supra) will also not assist the applicant in the facts and circumstances of the case.

9. It is also relevant to note that on 10.2.2000 the applicant had submitted a representation to the

Hon'ble Minister in which she has mentioned, inter alia, that vide her appeal on the same date, she had requested the Secretary, Petroleum and Natural Gas, to cancel/revoke the termination order dated 12.1.2000. Further, she has mentioned that she understands that the Secretary has rejected her appeal and termination letter is being served on her. We also note that in a letter written by the Hon'ble Minister dated 9.6.2000 in reply to the letter of Hon'ble Member of Parliament who had referred ~~to~~ the case of the applicant and her representation against termination of her services, the Hon'ble Minister has stated, inter alia, that the applicant had joined the Ministry on 1.3.1990 as Stenographer Grade 'D' and right from the beginning she has been more or less on leave and, in fact, she has been on leave for over six years. It has also been mentioned that she had been on unauthorised leave since 10.8.1990 in spite of being told several times to join duty and also get the second medical opinion from Dr. R.M.L. Hospital. After her resumption of duty from 5.4.1999 to 14.6.1999, she has been again absent ^{from} ~~from~~ duty from 15.6.1999 onwards, which has been mentioned above. As seen from the records submitted by the respondents, these letters show that the applicant while addressing her representation on 10.2.2000 for sympathetic consideration to the Hon'ble Minister has already made a statement in that letter itself that she understands that the Secretary has rejected the appeal and termination letter is being served on her. These facts speak for themselves which also show that while the applicant could make the appeal to the Secretary and the

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Hon'ble Minister on 10.2.2000, her request for resumption of duty came only at the eleventh hour, that is on 16.2.2000, which she has reflected in her representation to the Hon'ble Minister on the same date. We have also considered the other contentions raised by the learned counsel for applicant but do not find any merit in the same.

10. In the result, for the reasons given above, the O.A. fails and is dismissed. No order as to costs.

(Govindan S. Tampi)
Member (A)

SRD

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)