

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 960/2001

New Delhi, this the 5<sup>th</sup> day of February, 2003

Hon'ble Sh. Shanker Raju, Member (J)

Ex-Hav. Bishambhar Singh  
Counter Attendant, GPD  
CSD Canteen Meerut  
Sub Area Meerut  
R/o C/o Rajveer Singh  
H.No.44, Gali No.17, Brahmपुरi  
Shahdara, Delhi - 32.

...Applicant

(By Advocate Sh. S.K.Sharma)

V E R S U S

1. Union of India : through  
Secretary  
Ministry of Defence  
New Delhi.
2. QMG Army Headquarters  
QMG's Branch, DHQ, P.O.  
New Delhi - 110 011.
3. Sub Area Commander  
Meerut Sub Area  
Meerut Cantt.
4. Manager, CSD Canteen  
Meerut Sub Area  
Meerut Cantt.

...Respondents

(By Advocate Sh. S.K.Gupta)

O R D E R

By Sh. Shanker Raju,

On jurisdiction, this OA was dismissed by an order dated 10-8-2001. High Court of Delhi by an order dated 9-5-2002 set aside the order and directions have been issued to hear the matter on merits.

2. Applicant who was working as Counter Attendant in Headquarter MSA Canteen in Defence impugns respondents' order dated 27-6-97 whereby his services have been terminated w.e.f. 30-6-97 with one

month pay in view of notice. He has sought quashment of the same with directions to reinstate him with all consequential benefits.

3. Applicant who possessed Diploma in Store Holder was appointed as a Counter Attendant in Unit Run canteen on 27-11-96 in pursuance of Notification. His appointment was temporary but likely to be extended till 28-1-97 with a stipulation that in case his work is not found satisfactory during the above period, his services can be terminated without any notice. Although there were no terms and conditions in vogue but it was stipulated in the appointment letter that the other terms and conditions which are in process of being framed would be served in due course.

4. Applicant's services have been terminated during the probation period as his performance was lacking and he found weak in reading writing, undisciplined and discourteous towards the employees and customers.

5. Sh. S.K.Sharma, ld. counsel for the applicant contended that he made a representation for cancelling the termination order whereby he has apologised for the mistakes but that would not amount to his admission.

6. Sh. Sharma contended that the order passed is punitive, founded on his misconduct and is stigmatic as such after the employees of Unit Run Canteen are declared Govt. servant, Article 311 (2)

of the Constitution of India is applicable as such services cannot be dispensed with without affording reasonable opportunity to show cause and without holding a departmental enquiry. Sh. Sharma places reliance on the decisions of the Apex Court in Deepti Prakash Banerjee Vs. S.N. Bose National Centre for Basic Sciences, Calcutta & Ors. (JT 1999 (1) SC 396) and also on V.P. Ahuja Vs. State of Punjab (JT 2000 (3) SC 1).

7. Sh. Sharma contended that at the time when the applicant was appointed, the conditions of service were yet to be framed and further placing reliance on the decision of Chandigarh Bench of this Tribunal in Ris. Major Sant Ram Phogat (Retd.) Vs. UOI & Anr. (OA 508/96) decided on 16-10-2001, it is contended that failure to hold an enquiry before termination in Unit Run Canteen, order has been declared illegal by DB. He also places reliance on a decision of DB of Principal Bench in OA 381/2001 in Mani Ram Vs. UOI decided on 12-9-2001.

8. According to the applicant as initially he was appointed till 28-1-97, his continuance beyond this period has an effect of deemed confirmation and in that event having attained the permanent status, he can not be terminated without following due process of law.

9. In so far as stigmatic order is concerned, it is stated that on the face of it, order of termination casts stigma and from the attending and proceeding circumstances, where the applicant has been

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issued explanations and enquiries have been held in his back, no further proceedings have been held, clearly shows that the action is founded on his alleged mis-conduct, for which he has not been afforded a reasonable opportunity to show cause.

10. On the other hand Sh. S.K.Gupta, ld. counsel appearing for the respondents contended that the applicant was appointed on temporary basis with a stipulation that if his work and conduct is not found satisfactory, his services would be terminated. The order passed is simple, innocuous and as per the terms and conditions, as the applicant's working and performance was not found satisfactory.

11. In so far as performance is concerned, it is contended that several memos and warnings have been issued to the applicant and in his reply, he tried to shift blame to others. The report of Canteen Manager along with the statements of his colleagues is sufficient to indicate the unsatisfactory performance of the applicant. In so far as the certificate issued by the respondents, this has been managed after termination for other purposes which is routinely issued to facilitate the Army personnel to seek job after retirement. He denies that the order is punitive or casted any stigma upon the applicant.

12. Sh. Gupta further contended that in the light of decision in Deepti Prakash Banerjee (supra), as no enquiry has been held behind the back of the applicant and the respondents have decided not to continue with the applicant on his unsatisfactory

performance during his probation, the termination resorted to cannot be found fault with. Sh. Gupta stress upon the alleged admission of the applicant as to his guilt in Annexure A-10, where he has tendered unconditional apology which is on his volition made voluntarily. He places reliance on the decision of Delhi High Court in Ex. Constable Balgad Vs. UOI (2003 (1) SLJ 71) to contend that one can be held guilty on his own admission. He lastly contended that if the reference is to be made to Section 2 (oo) and 2 (f) of the Industrial Disputes Act, 1947, then this Court has no jurisdiction and the applicant has to take recourse before the appropriate Forum for redressal of his grievance.

13. I have carefully considered the rival contentions of the parties and perused the material on record.

14. As held by the Apex Court in UOI Vs. M. Aslam (2001 (1) ATJ 667), employees of Unit Run Canteen have been treated as Govt. servants. Article 311 (2) of the Constitution would apply to them.

15. In case of termination of a probationer or holding a temporary post, the Apex Court in Deepti Prakash Banerjee (supra) has reviewed in their case law and as regards misconduct whether foundation or motive observed as follows :-

"21. If findings were arrived at in inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But

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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.

16. In so far as stigma is concerned, the following observations have been made by the Apex Court in Deepti Prakash Banerjee's case (supra) :-

"35. The above decision is, in our view, clear authority for the proposition that the material which amounts to stigma need not be contained in the order of termination of the probationer but might be contained in any document referred to in the termination order or in its Annexures. Obviously such a document could be asked for or called for by any future employer of the probationer. In such a case, the order of termination would stand vitiated on the ground that no regular inquiry was conducted. We shall presently consider whether, on the facts of the case before us, the documents referred to in the impugned order contain any stigma.

36. It was in this context argued for the Respondent that the employer in the present case had given ample opportunity to the employee by giving him warnings, asking him to improve and even extended his probation twice and this was not a case of unfairness and this Court should not interfere. It is true that where the employee had been given suitable warnings, requested to improve, or where he was given a long rope by way of extension of probation, this Court has said that the termination orders cannot be held to be punitive. Hindustan Paper Corporation Vs. Purendu Chakraborty (JT 1996 (10) SC 1) See in this connection, Oil & Natural Gas Commission Vs. Md. S. Iskendu (1980 (3) SCC 428), Unit Trust of India Vs. T. Bijaya Kumar (1992 (5) Serv. L.R. 855 (SC)], Principal, Institute of P.G. Medical Education & Research, Pondichery Vs. S. Anand & Ors. (JT 1992 (6) SC 82) and a labour case

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Oswal Pressure Die Carting Industry Vs. Presiding Officer (JT 1998 (2) SC 256). But in all these cases, the orders were simple orders of termination which did not contain any words amounting to stigma. In case we come to the conclusion that there is stigma in the impugned order, we cannot ignore the effect it will have on the probationer's future whatever be earlier opportunities granted by the respondent organisation to the appellant to improve.

37. On this point, therefore, we hold that the words amounting to 'stigma' need not be contained in the order of termination but may also be contained in an order or proceeding referred to in the order of termination or in an annexure thereto and would vitiate the order of termination. Point 3 is decided accordingly.

17. Apex Court in V.P.Ahuja's case (supra)

held as follows :-

"5. The observation of the High Court that :-

"The impugned order is not stigmatic and nothing at all has been urged that may detract from such an order being passed during the currency of probation."

is surprising, to say the least. The order by which the services of the appellant were terminated has already been quoted by us above. The order, ex facie, is stigmatic as also punitive. The order is founded on the ground that the appellant had failed in the performance of his duties administratively and technically. It is for this reason that the services of the appellant were terminated. As pointed out above, the order, ex facie, is stigmatic.

6. Learned counsel for the respondents has contended that the appellant, after appointment, was placed on probation and though the period of probation was two years, his services could be terminated at any time during the period of probation without any notice, as set out in the appointment letter. It is contended that the appellant cannot claim any right on the post on which he was appointed and being on probation, his work and conduct was all along under scrutiny and since his work was not satisfactory, his services were

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terminated in terms of the conditions set out in the Appointment Order. This plea cannot be accepted.

7. A probationer, like a 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 without complying with the principles of natural justice.

8. The affidavit filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the fact of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant.

9. The entire case law with respect to a "probationer" was reviewed by this Court in a recent decision in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors. (1999) 3 SCC 60 = AIR 1999 SC 983 = JT 1999 (1) SC 396. This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the face of it.

If one has regard to the decision of Apex Court in Deepti Prakash Banerjee's case (supra) as well as V.P.Ahuja's case (supra), although stigma depends upon the facts and circumstances of each case and the language and words in the order of termination. Although the warning and explanations have been called for from the applicant to improve his performance, but in the order of termination, the words used regarding undiscipline and discourteous attitude of the applicant and weakness in reading writing certainly has an effect over the future prospects of the applicant irrespective of earlier opportunities granted to improve. Had it been a simple order of termination, this would not have come within the ambit of stigmatic order.

18. From the perusal of the order ex facie it is stigmatic as well as punitive which is founded on the ground that the applicant has failed in performance of his duties which was the only reason to dispense with his services. In the light of the aforesaid decisions, the order is stigmatic and cannot be resorted to without holding a regular departmental enquiry and giving an opportunity of hearing to the applicant. DB of Chandigarh Bench of this Tribunal has taken a similar view in Ris. Major Sant Ram Phogat's case (supra), to which I respectfully agree.

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19. In the result, for the forgoing reasons, order of termination is not sustainable in law and is accordingly quashed and set aside. Respondents are directed to reinstate the applicant with all consequential benefits. However, this would not preclude them from taking any action, if so advised, in law keeping in view the observations made above.

20. DA is accordingly allowed. No costs.

△

S. Raju

(SHANKER RAJU)  
MEMBER (J)

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