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Central Administrative Tribunal, Principal Bench

O.A.861/1999

New Delhi, this the 14th day of November, 2000

Hon'ble Mr.Kuldip Singh,Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

Shri Laloo Yadav
R/o House No.263, Dr. Mukherjee Nagar,
Delhi-110 007 ..Applicant

By Advocate: Shri Shashindra Tripathi.

Versus

1. Union of India
Through Secretary,
Ministry of Home Resource Development
(Department of Education)
Shastri Bhavan,
New Delhi.

2. Navodya Vidyalaya Samiti
Through Deputy Director Personnel
A-39 Kailash Colony,
New Delhi-110 048. ..Respondents

By Advocate: Shri S. Rajjapa.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this OA assails the order of termination of his services vide which his sevices had been terminated under Clause 2 of the appointment letter.

2. Facts in brief are that the applicant was appointed as PGT Biology in Navodya Vidyalaya Samiti (hereinafter referred to as NVS) on direct recruitment basis under OBC quota. The Clause 2 of the appointment letter provided that the applicant was to undergo probation for a period of 2 years and in case the applicant fails to complete the probation period to the satisfaction of the authorities or found unsuitable for the post during the probation period was liable to be discharged/terminated from service without assigning any

reason thereof. The respondents while invoking the said clause, terminated the service of the applicant.

3. The applicant claims that while he was undergoing probation period, he was transferred from Navodaya Vidyala Surankot Punccha to Navodaya Vidyalaya Longowala in Punjab and on 13.3.98 he received information about the serious illness about his mother and proceeded on casual leave for 5 days from 13.3.1998 to 17.3.98 to attend upon his old mother at his home town Azamgarh in U.P. On reaching his home state he found that his mother was suffering from some ailment. He then informed the Principal regarding the illness and applied for extension of leave also but his application had not been accepted and he was directed to report for duty. But due to his own illness he could not report and ultimately his services had been terminated.

4. Applicant further claims that his services could not be terminated simply for the reasons for not joining the service on account of prolonged illness of his mother and his own bed ridden state.

5. He further claims that absence from duty does not tantamount to disobeying the orders of superiors.

6. It is further claimed that the respondents should have resorted to an enquiry if at all they were not satisfied with the explanation given and they could not have resorted to Clause 2 of the appointment letter and

7. The respondents contested the O.A. They submitted that the applicant had proceeded on casual leave for 5 days from 13.3.98 to 17.3.98 but after 17.3.98 he did not report for duties in spite of repeated letters and since the applicant did not resume duties so the matter was referred to the Regional Office and the applicant was informed that action under the rules will be initiated against him but he continued to absent himself and vide communication dated 17.11.1998, the applicant sent an application informing that his mother was still not feeling well and moreover he himself was not feeling well. As regards his own illness is concerned, he had not taken any steps to submit the medical certificates from the doctor that he was not feeling well, therefore, a memo was issued on 22.12.1998 to which he sent a reply but still he did not submit any medical certificate in support of his application so the application for extension of leave was considered by the Principal but was rejected, as such the order of termination was passed in accordance with the terms and conditions of service.

8. We have heard the learned counsel for the parties and have gone through the records of the case.

9. The learned counsel appearing for the applicant submitted that the memo was issued vide RA-4 and in that the respondents had taken a stand that if the applicant does not explain the reasons for not joining the duty in spite of the advice of the Principal within 10 days from the date of issue of the memo, action will be taken under the CCS (CCA) Rules, 1965 so now the respondents shall invoke clause 2 of the appointment letter and once a memo has been issued to take action under the CCS (CCA) Rules, 1965 a stigma is attached in the termination letter and

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the applicant could not have been terminated from service without following the due process of holding a disciplinary enquiry. The so called termination simpliciter by invoking Clause 2 of the appointment letter is on the face of Annexure RA-4 the memo issued by the Department is bad in law and in support of his contention, the learned counsel for the applicant referred to a judgment reported in 200(3) SCC 239 - V.P. Ahuja Vs. State of Punjab & Others wherein the employee who was appointed as Chief Executive in the Establishment of Punjab Cooperative Cotton Marketing & Spinning Mills Federation Limited whose services were terminated during the probation period stating that the termination order is stigmatic as also punitive. The order is founded on the ground that the applicant had failed in the performance of his duties administratively and technically. The Hon'ble Supreme Court found that the order is stigmatic and could not have been passed without holding a proper enquiry. Relying upon the same the learned counsel for the applicant submitted that in this case also the impugned order was passed merely because the applicant had not submitted his medical certificates or he had not joined duties so it cannot be held that he is not a fit person to be retained in service any more and the order is stigmatic and the same be quashed and an enquiry should be held to find out whether the applicant was actually sick or not.

10. In reply to this, the learned counsel for the respondents submitted that since the respondents have invoked Clause 2 of the appointment letter as the respondents were not satisfied with the explanation given by the applicant and came to the conclusion that he is not a fit person to be retained in service and passed impugned

order of termination whcih is quite innocuous and no stigma is attached to it, so the applicant cannot challenge the same and the department was not under any obligation to conduct a disciplinary enquiry. Shri S. Rajappa appearing for the respondents also referred to a judgment given in TA 41/99 entitled as Kendriya Vidyalalya Sangathan Vs. Sh. Madan Lal decided on 31.8.2000. In that case also the employee was a probationer Trained Graduate Teacher and was put on probation and while on probation he was removed from service without assigning any reason and it was alleged in the civil suit that the order of removal was punitive in nature as no opportunity of hearing was given and the plea of the Kendriya Vidyalaya Sangathan was that as the employee was not found to be suitable to continue in service in accordance with the terms and conditions of Clause 2 of the appointment letter. A co-ordinate Bench of this Tribunal while referring to various judgments by the Apex Court had observed as under:-

> " 14. In order to determine whether an order of termination of a probationer was simpliciter or punitive in nature the Supreme Court evolved a principle which could be deducible on the basis of 'motive' and 'foundation' concerning the termination of a probationer. The Supreme Court in Madan Gopal v. State of Punjab, AIR 1963 SC 531 held that the termination order would not be punitive merely because of an antecedent enquiry but the real object or purpose of the enquiry had to be found out whether it was held merely to assess the general unsuitability of the employee or it was held into charges of misconduct or inefficiency etc. In Radhey Shyam Gupta v. U.P. State Agro Industries Corporation Ltd., AIR 1999 SC 609 the legal position was elaborately reviewed by his Lordship M. Jagannadha Rao, J. and after elaborately discussing the various decisions on the subject observed that the question whether the order by

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which the services were terminated was innocuous or punitive had to be decided on the facts of each case after considering the relevant facts in the light of the surrounding circumstances. In Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others, AIR 1999 SC 983 the Supreme Court ruled that if findings were arrived at in enquiry as to misconduct behind the back of the employee or without a regular departmental enquiry the simple order of termination has to be treated as "founded" on the allegations and it would be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry, 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. In the latest decision on this matter in Chandra Prakash Shahi v. State of U.P, AIR 2000 SC 1706, Justice Saghir Ahmad, speaking for the Bench, having discussed the entire gamut of case law on the subject right from Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 38 upto Radhey Shyam Gupta (supra) has reiterated the proposition of motive and foundation and the difference between the two in ascertaining whether an order of termination of a probationer was punitive or not?

13. Thus, depending upon the facts of each case it has to be seen whether an order of termination was punitive or not, in the light of the ratio laid down by the Supreme Court? The complaints and allegations against the probationer relate to non-returning of the answer books by him till the last date, for not taking the classes allotted to him, his sense of responsibility being below average, his being non-cooperative with the colleagues, not well-beahved and cultured and not popular amongst the students. Thus, considering the entire material which has been relied upon by the respondent in the Suit, it has to be held that the conclusions arrived at by the authorities were only to ascertain whether he was a suitable person to be continued on probation. The trial court also has come to the conclusion that these allegations pertain to his conduct and performance of his duties. Hence, the opinion arrived at by the authorities cannot be said to be a foundation into any misconduct that was alleged against him".

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11. Applying the law as analysed by respective Co-ordinate Bench we find that in this case also the respondents have not laid down any foundation by issuing a memo to reach at any opinion regarding misconduct of the applicant. The termination order shows that the respondents had found that the applicant was not suitable to continue in the post and since the applicant had not completed the probation period and he had not been confirmed in service, so the respondents were justified in invoking Clause 2 of the appointment letter. Hence, no interference is called for.

12. In view of the above, OA has no merits which is accordingly dismissed. No costs.

( M.P. Singh )
Member (A)

( Kuldip Singh )
Member (J)

Rakesh