

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A. No. 934 of 1998 decided on 29.6.1999

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Name of Applicant : Smt. Jyoti Arora

By Advocate : Shri B.S. Mainee

Versus

Name of respondent/s Union of India through the  
Secretary, Deptt. of Education & others

By Advocate : Shri B.S. Gupta through proxy counsel  
Shri Amresh Mathur

Corum:

Hon'ble Mr. Justice V. Rajagopala Reddy, V.C. (J)  
Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No

2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

*Narashamshu*  
(N. Sahu) 29.6.99  
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.934 of 1998

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New Delhi, this the 29<sup>th</sup> day of June, 1999

HON'BLE MR.JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN(J)  
HON'BLE SHRI N.SAHU, MEMBER(A)

Smt.Jyoti Arora,  
Ex. Lecturer(English)  
Aryabhat Polytechnic  
Directorate of Training & Technical Education,  
'C' Block,, Vikas Bhawan,  
I.P.Estate,  
New Delhi. ....Applicant

(By Advocate: Shri B.S.Mainee)

Versus

Union of India: through

1. The Secretary,  
Department of Education,  
Ministry of Human Resources Development,  
Shastri Bhawan,  
New Delhi.
2. The Hon. Lt. Governor  
Govt. of N.C.T. of Delhi,  
Raj Niwas,  
New Delhi.
3. The Chief Secretary,  
Govt. of N.C.T. of Delhi,  
Old Secretariat,  
Delhi.
4. The Secretary,  
Directorate of Training & Technical Education,  
'C' Block,, Vikas Bhawan,  
I.P.Estate,  
New Delhi. ....Respondents

(By Advocate: Sh.B.S.Gupta, through Sh.Amresh Mathur,  
learned proxy counsel)

O R D E R

By Hon'ble Mr.N.Sahu, Member(A)

This O.A. is directed against the order dated 19.3.97 terminating the services of the applicant under proviso to sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Services) Rules, 1965. It is stated in the order that the applicant shall be entitled to claim the pay and allowances for the period of notice.

2. The applicant was selected by the Union Public Service Commission as an English Lecturer under the Directorate of Technical Education, Delhi in Group 'A' service on 3.4.87. It is made clear in the order that her appointment is temporary and there will be a probation of two years. Clause 3 of the order of appointment (Annexure A-2) states that the appointment may be terminated by one month's notice given by either side, without assigning any reasons and the appointing authority reserved the right of terminating services by giving a notice period or payment in lieu thereof. There are other conditions of appointment but they are not relevant for our purpose.

3. The applicant joined her duties on 22.6.87 and in terms of Annexure A-4 dated 18.6.91, she completed the period of probation of two years "satisfactorily". Her husband is an army officer and was transferred to Pune. She applied for medical leave from 19.11.91 to 19.1.92. Her medical treatment continued till 21.2.92 and thereafter she was on medical leave for successive periods, the latest being 29.11.92 to 26.1.93. The respondents directed the applicant by a letter dated 10.5.93 for a medical examination by the civil medical authorities. Her husband was transferred from Pune to Siliguri and the applicant informed the respondents about the change of her address in July, 1993. On 5.8.93, the respondents directed the applicant to report to Medical Superintendent, Sassoon General Hospital for appearing before a Medical Board.

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4. According to the respondents, the applicant resorted to delaying tactics and she managed to scuttle the efforts of the Department for two years to get herself examined by a medical Board. She produced a medical certificate for the period from August, 1995 to December, 1996 which, according to the respondents, established that she was not fit enough to serve. The respondents found that their academic session was handicapped by the absence of an English teacher because she remained absent on medical grounds for a period of five years. According to the respondents, the applicant is a temporary Government servant and the order of termination was in accordance with the Rules. Though the completion of probationary period is a pre-requisite for granting permanent status, she cannot be declared permanent unless and until a DPC accords approval and formal order is passed. According to the respondents, her long absence is considered to be a factor that would come in the way of granting her permanent status. The Institute and its students suffered on account of the absence of the applicant.

5. In rejoinder, the applicant states that her husband had visited the office of Joint Director and assured him that she would be joining the service in April, 1997. Without waiting for that period, the respondents terminated her services. Although in the notice dated 21.1.97, the respondents indicated initiation of disciplinary proceedings but no such action was taken against her and her services were terminated under CCS (TS) Rules which were not applicable to her. She could not have preferred an appeal to the Lt.

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Governor of Delhi because the impugned order of termination was passed by the Lt. Governor himself. Learned counsel for the applicant relied on the decision of the Delhi High Court in the case of Prem Chand Gupta vs. Management of MCD - ATJ 1998(1) 147. The applicant in that case was an employee with the M.C.D. temporarily for a limited period. He was issued notice of termination of service giving one month's time. Salaries and allowances were not paid alongwith notice as required under Rule 5 of the CCS (Temporary Service) Rules. The Hon'ble Delhi High Court held that notice of termination from service was not valid and it was not effective termination. The applicant was held to be entitled for all salary and allowances from the M.C.D. Payment had to be tendered alongwith notice and that having not been done, the said notice was stated to be not valid in law.

6. In the present case also, as the notice of termination was not accompanied by a month's salary, the said notice is held to be illegal and would not terminate the services. A Supreme Court decision was cited by the learned counsel for the applicant in support of this view also. In the case of Senior Superintendent, R.M.S. Cochin and Anr. vs. K.V. Gopinath, Sorter - SLR 1972 S.C. 390, the Supreme Court was examining the scope of Rule 5 of CCS (Temporary Service) Rules, 1965. The Supreme Court held that the salary should be paid into the hands of the employee simultaneously as he was served with an order of termination under Rule 5. Hon'ble Supreme Court held that termination of service has to be simultaneous with the payment to the employee of whatever was due to him.

Answer

7. The second decision relied upon by Shri Maine is Kishori Mohan Singh vs. Union of India through the Ministry of Defence & ors. - AISLJ 1998 (Vol.2) CAT 265.

Para 10 and 11 of the report sums up the substance of the decision and is extracted hereunder:-

10. "Once the Board had declared him fit on 20.8.1987, the applicant should have been made regular. Instead of taking this action the concerned authorities waited for the finalisation of the disciplinary action and then interpreted the penalty period as extension of the probation. Not only this, without giving any indication to the applicant that his probation period has been extended, matter was allowed to drag for almost 2-1/2 years. In consideration of these facts, we are of the view that action of the respondents in not declaring the applicant having completed his probation after the recommendation of the Board held on 20.8.1987 was arbitrary and not sustainable.

11. As per the rules prevailing at that time, the applicant should have been declared quasi-permanent as soon the Board declared him fit. The services of the applicant under Rule 5 of CCS (TS) Rules, 1965, then could not have been terminated. The respondents in violation of their own instructions continued the applicant for almost 6-1/2 years without specifically extending the probation period after 20.8.1987. The termination order is therefore not legally sustainable."

8. The learned counsel for the applicant relied on a decision of the Gujarat High Court in the case of Dahyabhai Mangalpur Gosai vs. Cantonment Board, Ahmedabad and another - 1994 (2) S.L.J. (CAT) 144. The ratio of the decision is that on the expiry of a maximum period of probation, one shall be deemed as confirmed. Shri Maine argued that in the applicant's case, as the period of probation has been held to be completed satisfactorily,

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the applicant must be treated as a confirmed employee and in consequence his services could not be terminated without observing the due process of law by an order of termination simplicitor under Rule 5 of CCS (Temporary) Service Rules. Shri Maine also buttressed his argument by citing another decision in the case of J.C. Marwaha vs Union of India and ors. - 1996 (3) S.L.J. (CAT) 363. That was a case of a probationer to be considered for deemed confirmation. Under para 320 of the Manual of standing orders (Administration), the rules provided pension entitled to substantive holders of a post. The question was whether the applicant was entitled to receive pension and for that purpose the question to be answered was whether the applicant was confirmed in that post. Para 320 prescribed a maximum of 3 years probation. The applicant had been working for more than three years. It was held that he was deemed to have been confirmed on expiry of three years. For this purpose, the Chandigarh Bench relied on the decision of a Constitution Bench of the Hon'ble Supreme Court in the case of State of Punjab vs. Dharam Singh - 3 SCR 1968 page 1. In that case it was held that where on the completion of specified period of probation an employee is allowed to continue in the post without an order of confirmation, then the initial period of probation is deemed to be extended by necessary implication but where the service rules fix a certain period of time beyond which probationary period cannot be extended then after the maximum period, he cannot be held to continue as a probationer.

9. Learned counsel for the respondents vehemently contended that the applicant absented from duties for more than four years. Since July, 1987, she attended her duties only for 642 days and that too in short spells. The respondents suspected that her problem arose when the competent authority insisted on a medical certificate from a Civil Hospital because her husband's influence as a Surgeon in a Military Hospital would not extend to a Civilian Medical Board.

10. It is true that inspite of warnings, the applicant was not able to join her duties with effect from July, 1992 and remained absent from the year 1993. She produced medical certificate for the period from August, 1995 to December, 1996 which establishes that she was not in a position to serve. The institution suffered, the students suffered. The only question at issue is when she remained absent on medical grounds for over a period of five years, was it not proper on the part of the respondents to come to a conclusion that she would not be fit to discharge her responsibilities as a teacher and the Institution would no longer require her services? The respondents contend that there is no failure of natural justice on their part. They have given ample time of about seven years before the termination was made.

11. We have examined the medical certificates issued by the Military Hospital. The respondents are at liberty to direct her to be examined by the Civil medical authorities independently and depending on the report her fitness to continue in service can be decided. An

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employer has every right to consider the justification for continuing an employee on the ground of medical unfitness or on the ground the medical leave sought for is not genuine. If the employee had been absenting herself/himself from work on medical grounds, would it not be proper for the employer to terminate her/his services? An answer to this question would depend on the report of the medical authorities after examining her. But in this case proper procedure has not been followed. We have found from the records that the applicant's probation period had been completed satisfactorily. There is no order on record to continue her further on probation. Thus the only inference to be drawn is that she cannot be held to be a probationer any longer. The second infirmity is that she was not paid a month's salary alongwith the termination order. That infirmity cannot be cured by subsequently remitting the money.

12. We, therefore, hold that the notice of termination under Rule 5 cannot be sustained. The respondents are at liberty to take such further steps and procedures permissible under the law relating to the question of continuing her in service under the relevant medical rules and the disciplinary rules. <sup>With these observations, I am</sup> The O.A. is allowed. No costs.

N. SAHU

( N. SAHU )  
MEMBER(A)

V. RAJAGOPALA REDDY

( V. RAJAGOPALA REDDY )  
VICE CHAIRMAN(J)

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