

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A./TxA. NO. 181 /1995 Decided on :

Smt. Omwati Pachoria ... Applicant(s)

(By Shri K.C. Mittal Advocate)

versus

U.O.I. & Another ... Respondent(s)

(By Shri Vijay Kr. Mehta Advocate)

CORAM

THE HON'BLE SHRI J.P. SHARMA, MEMBER(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

- ✓ 1. To be referred to the Reporter or not ? Yes
- ✓ 2. Whether to be circulated to other Benches of the Tribunal ?


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 181 of 1995

New Delhi this the 28th day of August, 1995

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HON'BLE MR. J.P. SHARMA, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Smt. Omwati Pachoria
W/o Shri Ram Sarup Pachoria
R/o House No.C-94,
Village Mohammad Pur,
New Delhi.

...Applicant

By Advocate Shri K.C. Mittal

Versus

1. Union of India through
Medical Superintendent,
Safdarjang Hospital,
New Delhi.
2. Chief Administrative Officer,
Safdarjang Hospital,
New Delhi.

..Respondents

By Advocate Shri V.K. Mehta

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant was one of the 163 Staff Nurses appointed by the second respondent on temporary basis. On accepting the offer of appointment, she joined as Staff Nurse in the Safdarjang Hospital on 26.8.93. In the offer of appointment, as per respondents letter dated 4.8.93 (Annexure-G), it is stated that the offer of appointment is subject to the terms and conditions mentioned therein. Item No.5 of the aforesaid terms and conditions is reproduced below:-

" He/she will be on probation for a period of two years which may be extended at the discretion of the competent authority. His/her services are terminable at any time without assigning any reason thereof by a month's notice on either side. The

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appointing authority however, reserves the right of terminating her/his service forthwith or before the expiry of the stipulated period of notice by making payment to her a sum equivalent to the pay and allowances for the period of notice".

2. The respondents by their office order dated 10.01.95 (Annexure-A), terminated the services of the applicant with effect from 10.01.95 (F/N) and in lieu of one month's notice required as per terms and conditions, she was paid one month's gross salary amounting to Rs.3577/- by the aforesaid order. Aggrieved by this order, the applicant has approached this Tribunal with the prayer to set aside and quash the impugned order dated 10.01.95 and to direct the respondents to reinstate the applicant from the date of her termination of her services.

3. The main grounds on which the applicant has sought to approach this Tribunal for relief, are as follows:-

(i) That she as a Scheduled Caste candidate was duly qualified and fully eligible for the post and was also sponsored by the Employment Exchange and that she belongs to the weaker section of the society.

(ii) That she has had a clean record of performance with no complaints whatsoever by her subordinates and her performance has been absolutely satisfactory.

(iii) That she has been singled out illegally and arbitrarily and for termination of her services from among 163 Staff Nurses who have been appointed alongwith her and are similarly placed.

(iv) That her services have been terminated

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by the Chief Administrative Officer who is not competent, as Medical Superintendent is the competent appointing and disciplinary authority and, therefore, the order of termination is illegal.

(v) That the respondents, even without waiting for the completion of period of probation of the applicant, have terminated her services against the guidelines without analysing her performance.

4. The respondents have strongly resisted the application and have brought out the following facts:-

(i) The services of the applicant who was on probation have been terminated by an order simpliciter without any stigma and the termination was well covered by the terms and conditions of her appointment on probation.

(ii) It is not correct to say that the performance of the applicant was in any way satisfactory. The applicant has not been able to discharge her duties regarding nursing care/medical care on account of her lack of professional knowledge. She was not able to read prescriptions, drug labels, names of drugs/injections nor has she been able to understand instructions, written as well as verbal which are vital for the patient's care.

(iii) There were several complaints from the Nursing Sister in-charge of Operation Theatre, Faculty Members and the Nurses Union of the Safdarjang Hospital to the effect that the applicant did not understand the basic principles of medical care and she was not able to read the prescriptions, drug labels etc. and it was alleged that she could

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not even recognise routine type of instruments/equipments used in operation theatre and had been managing her duties with the help of other staff nurses and para-medical staff.

(iv) On the basis of a preliminary enquiry for ascertaining the background and the nature of the complaints, it was revealed that the applicant was not found suitable to perform the duties of a Staff Nurse, being poor not only in the professional work but also in her knowledge in English and in the said enquiry also the applicant pleaded that she could not read or write or understand instructions in English and it was felt that some working knowledge of English would be basic requirement in the Allopathic Medical Care. The preliminary enquiry led to the conclusion that the applicant would not be suitable for being entrusted with any kind of duties relating to patient care.

5. The respondents have averred that the purpose of placing a person on probation is to assess his/her suitability for the job and as the applicant has not been found suitable to discharge her duties, her probation has been rightly terminated within the terms and conditions of her appointment. The allegations regarding involvement of caste element have been denied by the respondents as being misplaced and without any basis.

6. The learned counsel for the applicant strenuously argued that in the garb of issuing an order of termination simpliciter, have issued a punitive order in the background of the so called preliminary enquiry into the complaints against the applicant. Secondly, he argued that had there been any complaint, the respondents should have

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framed the proper charge-sheet and should have instituted disciplinary proceedings against the applicant before taking any further action and they could not preemptorily terminate her probation without notice. He reminded that the applicant was after all selected through a proper selection procedure which should have included normally the verification and satisfaction of her professional qualifications for being appointed as a Staff Nurse and, therefore, to say that she did not have sufficient professional knowledge would be travesty of truth. He also pleaded that the applicant belongs to the Scheduled Caste and cannot be expected to have the same level or standard of knowledge as compared to a general candidate and the respondents cannot obviously adopt the same yardstick in the method of their assessment in the performance of the applicant as they would, in the case of general candidate. If such a course were to be adopted against the Scheduled Caste candidates inspite of their having been found to have minimum educational qualifications, this would effectively nullify the policy of the Central Government in providing relaxation to the Scheduled Caste candidates for appointments in Central Government service and each candidate cannot be adjudged on the same parametres as are generally adopted for general candidates with better educational and other economic and social background. In the light of this, he strongly pleaded that the action of the respondents has not been motivated by fairness and, therefore, cannot be sustained. The learned counsel for the

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respondents argued that the termination of a probation of the applicant was right within the terms and conditions of her appointment. The termination of the probation of the applicant was not related to any particular misconduct but an overall assessment of the performance and fitness of the applicant in the job in which she was appointed on probation. There was no mala fide element at all in the action taken by the respondents. He heavily relied on the decisions in **Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and Another, (1992) Vol.4 Supreme Court Cases 719, State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, (1991) 1 SCC 691** and also in **Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali, (1980) 3 SCC 428**. He particularly referred to the decision, in **ONGC and Others (Supra)** to point out that a temporary employee is appointed on probation for a particular period only in order to test whether his ^{performance and} conduct are good and satisfactory so that he may be retained. He invited our attention to the observations of their Lordships which are as follows:-

" It is manifest that even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influenced the employer to terminate the services of the employee, a power which the appellants undoubtedly possessed, even so as under the terms of appointment of the respondent such a power flowed from the contract of service it could not be termed as penalty or punishment".

The learned counsel contended that the termination of a probation was not directly related to any particular complaint although an enquiry was generally held not only on this complaint but also on similar complaints about the performance, efficiency of

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the applicant and her suitability for the job. The learned counsel strongly argued that it was after all necessary for the respondents to satisfy themselves about the suitability of the applicant particularly in the wake of complaints received against her. Before they could really come to the conclusion about the suitability and her efficiency, particularly in a place like hospital where efficient performance is of paramount importance in the health care to which Staff Nurses have to contribute a lot, ^{the matter was enquired into.} So long as there is no mala fide or any particular prejudice that is caused against the applicant and so long as the termination of probation is within the terms of such appointment and the decision to terminate the service is on the ground of unsuitability of the applicant to a job, the order of termination of probation cannot be called in question nor can it be held to be punitive in nature.

7. We have heard the learned counsel for the parties and have carefully perused the record. The applicant's contention that she was appointed against a permanent post with definite condition of probation and, therefore, the respondents should have suitably informed of her shortcomings and unsatisfactory performance before terminating her services is not tenable. The applicant was not appointed as a probationer in the sense that such an appointment is made against the permanent post with definite conditions of probation. The applicant was only placed on probation for a period of 2 years and in terms and conditions of her appointment, the services are terminable at any time without

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assigning any reason thereof by a month's notice on either side or by payment of salary in lieu of notice. Her eligibility for confirmation will be from the date of completion of probation satisfactorily and, therefore, such a confirmation would depend on ~~the~~ various factors such as eligibility of the person concerned for confirmation, her seniority and suitability etc. and, therefore, it will not be correct to equate the applicant to that of a probationer who is appointed against a permanent post although even a probationer has to successfully complete the period of probation. The contention that a preliminary enquiry made into some of the complaints which have a direct bearing on the knowledge, experience of the applicant in the job she was assigned, was used as a substitute for disciplinary proceedings or to avoid action under disciplinary procedure, is not tenable. After all a department has to have some reasons or basis before they come to the conclusion about the deficiency and performance level of the Staff Nurse on probation particularly in a situation where her day to day performance has a direct bearing on the health care of the patient concerned. It is pertinent to observe that their Lordships in the case of Governing Council of Kidwai Memorial Institute of Oncology (Supra) observed as follows:-

" When an appointment is made on probation, it presupposes that the conduct, performance, ability and the capacity of the employee concerned have to be watched and examined during the period of probation. He is to be confirmed after the expiry of probation only when his service during the period of probation is found to be satisfactory and he is considered suitable for the post

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against which he has been appointed. The principle of tearing off the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken, to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment. It need not be said that the appointing authority at the stage of confirmation or while examining the question as to whether the service of such employee be terminated during the continuance of the period of probation is entitled to look into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee".

8. In the present case, the action of the respondents in making enquiries about the performance level and the efficiency of the applicant is not related to any particular misconduct or misdemeanour but it related to an enquiry which arose out of several complaints received against the applicant from several departments and on the overall assessment of the suitability of the applicant in the job in which she was undergoing probation. It is true that the respondents did not act in vacuum and had to review the performance of the employee on probation. In fact it is the responsibility of the respondents not only to review and assess the suitability of the applicant alone but also of all other appointees. While such a review is undertaken in respect of such similarly placed Staff Nurses before the completion of probation, in the case of the applicant such a review had been necessitated in the wake of several complaints received against her and thus if such a review had been done in the form of an enquiry in the

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wake of these complaints, it cannot be said that the applicant was singled out for any punitive measure. The very purpose of keeping employees on probation is to facilitate such a review and to take suitable steps and where such appointees are found lacking either in performance or conduct, the respondents should be free to take appropriate steps including the termination. We are fortified in our view by the following observations of their Lordships in the Governing Council of Kidwai Memorial Institute of Oncology (Supra):-

"....If the decision is taken to terminate the services of an employee during the period of probation after taking into account the overall performance and some action or inaction on the part of such employee then it cannot be said it amounts to removal from service..... Even if such an employee while questioning the validity of an order of termination simpliciter brings on record some preliminary enquiry or examination of some allegations had been made, that will not vitiate the order of termination".

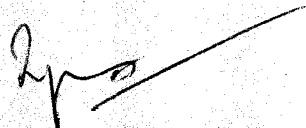
9. Regarding the contention of the learned counsel of the applicant that the applicant belonged to the Scheduled Caste and was unfairly removed without taking into account her educational and social background it must be stated that the applicant's educational and social background and the community status must have been duly taken into account at the time of her recruitment and initial appointment on probation. But she was found to be below par and was not found suitable particularly in an environment like that of a Hospital where the Staff Nurses are given basic training for a reasonable level of health care of the patients. Where such Staff Nurses on probation are found to be lacking in performance and efficiency, it cannot be contended that the Hospital authorities are expected to show leniency that will have the

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effect of compromising the basic health care requirements. That on perusal of the relevant record, we are satisfied that the respondents have sincerely attempted to satisfy themselves whether the applicant possessed the basic fundamental knowledge expected of a Staff Nurse trainee in the discharge of her duties and having found her to be lacking even after being on probation and received training for more than a year, have decided to terminate her probation. We do not see any mala fide or prejudicial action by the respondents.

10. In the light of the above discussion, we find that this application lacks merit and is accordingly dismissed leaving the parties to bear their own costs.



(K. MUTHUKUMAR)
MEMBER (A)



(J.P. SHARMA)
MEMBER (J)

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