

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.2197/94

3

New Delhi, this the 14th day of February, 1995

Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Pankaj Singh Aswal,
s/o Shri Bahadur Singh,
46C, Aaram Bagh,
New Delhi.

.... Applicant

By Advocate: Shri V.K. Rao

Vs.

1. Union of India
through
Cabinet Secretary,
Rashtrapati Bhawan,
New Delhi.

2. The Secretary(R),
Cabinet Secretary,
8-B, South Block,
New Delhi.

3. The Joint Secretary(Per),
Cabinet Secretariat,
8-B, South Block,
New Delhi.

.... Respondents

By Advocate: Shri M.K. Gupta

JUDGEMENT (ORAL)

Hon'ble Shri J.P. Sharma, Member(J)

The applicant was appointed as Field Assistant(G1) by the memo. dated 13.2.92. The appointment was temporary and was terminable at any time by one month's notice given by either side. The appointing authority also reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof. The appointee will be on trial for a period of 3 years from the date of appointment. While

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serving in the department, the applicant was transferred to RRC, Patparganj against vacancy in Telecom setup. The services of the applicant were terminated by the order dated 28.6.94 under Rule 5(i) of the CCS(TS) Rules, 1965 and was also allowed one month's pay with allowances in lieu of notice.

2. The applicant has filed this application on 31.10.94 and prayed that the order dated 28.6.94 terminating the services of the applicant be quashed and be reinstated in service with back wages.

3. A notice was issued to the respondents, who filed the reply opposing the grant of the reliefs prayed for. It is stated that the applicant was found to be lacking in qualities of character needed for the cadre to which he was appointed in 1992. Rule 142(iii) of the R&A (RCS) lays down that a probationer shall be liable to be discharged from service if he is found lacking in qualities of mind and character needed for the service. On 7.6.94, a lady employee of the organisation had seen him trying to peep inside the ladies toilet which is adjacent to the gent's toilet and the moment she shouted "who is there" the applicant disappeared. In the evening again at 5.20 p.m. when she had gone to the toilet, she saw the reflection of a person wearing white shirt. She immediately came back to Branch and asked another employee to check whether somebody was there in the men's toilet. It was found that right hand side of gent's toilet was locked from inside and water was kept running inside.

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The lady employee called the caretaker and the window of the gent's toilet was closed. After waiting for 10 minutes, the toilet door opened and the applicant came out from the toilet. The window of the toilet was locked, which is indicative of the fact that the applicant must have had either a duplicate key or had some means of opening the window. The explanation of the applicant was demanded. He confessed his guilt in writing about peeping through ladies toilet. The applicant was transferred to RRC, Patparganj when the matter was being considered by the authorities. There was a great agitation of the ladies employee in the organisation and that is why he has been transferred to another building. The action is not punitive in character and the services had been terminated by an order simplicitor.

4. The case of the applicant is that the applicant has also received an award to the extent of Rs.500/- for his good work, and has also given good A.C.R. as no adverse entry has been conveyed to him. It was only a misunderstanding due to which a complaint was made when he had gone at 5.30 p.m. to the toilet situated on the 7th floor. The applicant was pressurised to give in writing having been given an assurance that no action will be taken if he gives the same in writing.

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5. We have heard the learned counsel for the parties yesterday, and the case was reserved for orders on 14.2.95. But while going through the file it was necessary to rehear the counsel for the parties on certain material points. It is undisputed that the services of a temporary employee who has no lien on a permanent post can be terminated under Rule 5(1) of the CCS (CCA) Rules 1965 hereinafter called the rules. The order passed in such a case does not attach any stigma on the employee, in a sense there is no breach of Article 311 (2) of the Constitution of India. However, while going through the reply of the respondents they have referred to Rule 142 (iii) of R&AW (RC&S) rules, 1975. The respondents have not dispensed with the service of the applicant under this rule. The respondents have resorted to only 5(1) of the Rules. Thus we have not to go in for further discussion regarding the application of Rule 142 (iii) of RA&W (RC&S) rules 1975.

6. A probationer has to give a satisfactory performance for the period he is under watch and which is the condition which he has accepted in the offer of appointment. The respondents in their reply denied the averments made in the Original Application that during his working on the post of Field Officer (GD) since the date of joining i.e. 26.2.92 till the impugned order of termination was passed on 28.6.94 he has been working not only to the satisfaction of the Supervisory staff but also earned commendation and rewarded Rs.500/- . This goes to show that there was no deficiency in the discharge of the duty assigned to the applicant and his performance cannot be said to be not upto the mark. During the probation period, the period though it may be that the professional

7

and personal conduct of the applicant may be watched but more so it is concerned with the official discharge of duties of the probationer. The learned counsel for the respondents has referred to a catena of authorities decided by the Hon'ble Supreme Court which are quoted below :-

- (i) 1992 (21) ATC -844
Ram Kishan Bawa Vs ^{Gramin} Bundi Chitorgarh Kshetriya/
Bank and Others.
- (ii) 1975 (3) SCC Page-111
S.R. Siala Versus State of U.P.
- (iii) 1991 (3) SCC Page-325
Municipal Corporation Raipur Vs Ashok Kumar Misra
- (iv) 1991 (16) ATC P-498 SC
State of U.P. Vs Kushal Kishore Shukla
- (v) 1992 Supplement 1 SCC P-524
Triveni Kumar Saxena Vs State of U.P.

In the above noted authorities the working of the probationers was not found satisfactory. They were found in each of these reported cases i.e. in the case of Ram Kishan Bawa (Supra) he was found unfit, in the case of R.S. Siala, the reversion was from the officiating post to the substantive post and it was not a punitive action; in the case of Ashok Kumar Mishra, inspite of the extension of the probation period when no order of confirmation was issued the service of the probationer was terminated on account of being not fit for the job. Similar is the case of Kushal Kishore Shukla who was found unfit for the job. Lastly, Triveni Shankar Saxena order of termination was a simplicitor though Shri Saxena has joined service in 1978. All these cases are based on the ^{same} facts but one thing is common that the service has been terminated

8

on account of their being found unfit to function on the post they were appointed. In the probation period they could not work to the satisfaction of their Supervisory Staff. However, in the present case we found that the applicant has not been adversely commented upon during all these two years regarding his efficiency of working or any error or omission committed in the discharge of the duties assigned to him as Field Officer (G).

7. The respondents, however, have taken into account the alleged misconduct against the applicant which touches the moral aspect of the personal life of the applicant. There was certain complaint by the lady employee that the applicant was peeping in the toilet which was adjacent to men's toilet and also in the afternoon he was found in the men's toilet at about 5 p.m. on the same day. The respondents have taken disciplinary action by transferring the applicant from that building to TO WRC Patparganj. However, the applicant was made to write something which amounted to confessing the allegation levelled against him by the lady employee. It is projected in the averments made in the Original Application that the applicant was coerced and cajoled to write when he was taken in assurance that no action will be taken against him if such a note is given in writing. "To err is human to forgive divine.". When the respondents have after this note transferred him to another building then further action of passing the impugned order cannot be said to be wholly equitable and fair. Though the respondents have denied the averments of the applicant but circumstances speak better than the human agency. In this case if the

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applicant had to write to his own fault ~~but~~ there is tendency to conceal, there must be some benefit out of which he has to get otherwise he would not have given such a writing stating his own fault.

Secondly, a person cannot be made a witness against himself. If the respondents were satisfied for any misconduct apart from the official duties of the applicant he has to be given notice before entering into taking an action under Section 5(1) (TS) rule 1965. Though no show cause notice is required while passing such an order but in the circumstances of the present case it was all the more necessary as it was not an administrative matter but an allegation by the co-lady employee for certain act of the applicant which infringed her privacy.

8. Taking all these facts into account we are not convinced at the passing of order that it has been passed fairly and by applying mind to the text of the matter.

9. Be whatever it may be, the applicant has been out of job since 28.6.1994 by the direction we are issuing hereinafter the applicant will be taken into service. He will suffer some monetary loss being out of the service during this period. His probation period shall have to be extended as he has been out of work for a few months. We are taking all these facts into account while passing the order.

10. The application is, therefore, disposed of with the following directions by partly allowing the application that the impugned order of termination of service of the applicant dated 28.6.94 and the order passed, if any, by the higher authorities against the applicant, on his representation to them that shall stand quashed along with the order of termination of

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service.

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(i) The applicant shall be reinstated in service within one month from the date of the receipt of the copy of this order. He shall be entitled to wages, salary and other emoluments from the date he joins the service.

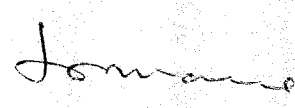
(ii) He will not get any wages, salary or allowances for the period from 28.6.94 till the date he is reinstated in service by virtue of this order.

(iii) However, the service of the applicant from 28.6.94 till the date of reinstatement shall be counted for all purposes of seniority and benefits of qualifying service for pension etc.

(iv) The respondents shall enlarge the probation of the applicant for the period he has been out of work during these three years from the date of his termination.

11. In the circumstances of the case the parties to bear their own costs.


(S.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)