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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. No. 1059 of 1994
T.A. No.

DATE OF DECISION 14.11.1994

Shri Dilbagh Singh Applicant(s)

Versus

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

(For Instructions)

1. Whether it be referred to the Reporter or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

(S.K. DHAON)
VICE CHAIRMAN

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1059 of 1994

New Delhi this the 14th day of November, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member

Shri Dilbagh Singh
E-56 Kalkaji,
New Delhi.

...Applicant

By Advocate Shri J.K. Bali

Versus

1. Secretary,
Min. of Home Affairs,
North Block,
Central Secretariat,
New Delhi.

2. Director,
Intelligence Bureau,
North Block,
Central Secretariat,
New Delhi.

...Respondents

By Advocate Shri Vijay Mehta

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The applicant, an Assistant Central Intelligence Officer, challenges the legality of the order dated 21.05.1993 passed by the Assistant Director in the purported exercise of powers under the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (the Rules). By a Memorandum dated 08.05.1990, the applicant was offered a temporary post of an Assistant Central Intelligence Officer. The term of appointment, as material, are these. The appointment is temporary. The same may be terminated at any time by a months's notice given by either side, viz. the appointee or the appointing authority, without assigning any reasons. The appointing authority, however,

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reserves the right of terminating the services of the applicant forthwith or before the expiration 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 of the unexpired portion thereof. He will have to serve for a minimum period of five years from the date of completion of his training as ACIO-II(G), unless his services are dispensed with in the exigencies of services or otherwise.

2. The applicant joined the service on 05.06.1990. He has averred that he was given a sensitive duty of handling operations in Punjab.

3. A counter-affidavit has been filed on behalf of the respondents. Therein, the material averments are these. The applicant was admonished orally several times to improve his performance but he did not show any sign of improvement. No written warning was issued keeping the security aspect in mind. He failed to discharge his duties efficiently and he showed no signs of improvement. His services have been terminated in accordance with the rules which do not provide that any reason should be given for doing so.

4. In the rejoinder-affidavit filed on behalf of the applicant, it is stated that he was, at no stage, admonished. He was not given any opportunity at any stage to improve himself.

5. In support of this O.A., the arguments advanced in the forefront is that the applicant having not been given any opportunity to improve his performance, the impugned order has been passed arbitrarily. The question, therefore, is whether the right of the Government to terminate the services of a temporary Government servant by passing an order of termination simpliciter is

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hedged in by the limitation that before passing such an order some sort of warning should be given to the employee so as to enable him to improve his performance.

6 It is now well settled that Article 311(2) of the Constitution is not applicable when the services of a temporary employee are terminated. The reason is that a person does not acquire any right to hold the post on which he has been temporarily appointed. The other reason is that merely because his services are done away with, he is not visited by penal consequences. To put it differently, the mere fact of termination of the service by passing an order of termination simpliciter is not punitive in character. Of course, the form of an order is not sacrosanct and it is always open to the Court or the Tribunal to tear the veil and see its real character or nature. A distinction has been drawn between the motive for passing an order and the foundation of an order. If it is found that the foundation of the order is some sort of a misconduct, it has to be necessarily held that the action is punitive and, therefore, the constitutional protection given to the Government servant under Article 311(2) comes into play. Motive, therefore, is immaterial.

7. If the Government has by contract, express or implied, or under the rules, the right to terminate the employment at any time, then such termination in the manner provided by the contract or the rules prima facie and per se does not attract the provisions of Article 311. In

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ppinciple there is no distinction between the termination of services of a person under the terms of contract covering him and the termination of the services in accordance with the terms of his service and in accordance with the terms of the condition of his services.

8. In Champaklal Chimanlal Shah Vs. Union of India, AIR 1964 SC page 1854, their Lordships observed as under:-

" In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a Government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex-parte, for it is merely for the satisfaction of Government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the Government, and it is only when the Government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the Government servant gets the protection of Article 311 and all the rights that that protection implies as already indicated above. There must therefore be no confusion between the two enquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the Government servant one of the three major punishments indicated in Article 311 that the Government servant is entitled to the protection of that article. That is why this Court emphasised in Parshotam Lal Dhingra case and in Shyam Lal Vs. State of Uttar Pradesh that the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rules is irrelevant".

It appears that the same principles were reiterated in the case of R.C. Iacy Vs. State of Bihar (CA 590 of 1962 decided on 23.10.1963).

9. In State of U.P. Vs. Kaushal Kishore shukla, (1991) 1 SC cases page 691, it was

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held:-

".....Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of the preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination".

It was further observed: " A temporary servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of contract providing for such termination or under the relevant statutory rule regulating the terms and conditions of temporary Government servants.."
In Shukla's case, Champaklal's case has been noted.

10. We may now examine the authorities cited by the learned counsel for the applicant in support of this application. They are:-

(i) Dr. (Mrs.) Sumati P. Shere Vs. Union of India And others, 1989 (2) SLR page 422. This is a 2-Judge decision of the Hon'ble Supreme Court.

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Relevant facts of this case were these. There was a permanent post of Assistant Surgeon Grade I in the Naval Headquarters. On 16.02.1982, before the Supreme Court the appellant was appointed to that post. The order of appointment stated that the appointment was made on an ad hoc basis for a period of six months or till a regular candidate from the Union Public Service Commission became available whichever was earlier. The appellant was, however, continued in service by giving her successive extensions from time to time. The last of such extensions was upto 15-02.1985. By a letter dated 12.1.1985 she was informed that her services would stand terminated with effect from 15.2.1985. She moved the High court of Bombay with Writ Petition No.304 of 1985 which was transferred to the Bombay Bench of this Tribunal.

11. In paragraph 4 of the judgment, their Lordships have noted these facts. The appellant, upon interview, was appointed on ad hoc basis against a substantive vacancy. From time to time, orders were made for continuing her services. She also earned increments in the pay scale admissible to the post. It was not the case of the respondents that a regular candidate selected by the Union Public Service Commission had been posted in her place. In the normal course, she would have continued till a selected candidate replaced her. The respondents, took the stand that they were not satisfied with her performance.

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However, at no time she was informed about her deficiencies. In paragraph 5 certain observations are important and we may extract the same because those observations appear to be the sheet-anchor of the applicant's case:-

" We must emphasise that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give-and-take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability".

We have read and re-read the contents of paragraph 5 and we are of the opinion that the same should not be detached from what has been observed in paragraph 4. In paragraph 4 their lordships have, in substance, emphasised that the appellant before them had a legitimate expectancy to continue with the job given to her, even though on ad hoc basis, till a regular appointee approved by the UPSC had taken over the post held by her. That expectation was cut short by the order of termination. In these circumstances, and back ground their lordships have held in paragraph 5 that the conduct of the respondents taken as a whole appears to be arbitrary. Their lordships did not and could not lay down the law

that whenever the services of a temporary Government servant are sought to be terminated on the ground of general unsuitability some sort of a prior notice should be given to such an employee.

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We may note that way back in 1974 a 2-Judge Bench of the Hon'ble Supreme Court struck a discordant note in Union of India Vs. M.I. Capoor, AIR 1974 SC page 87, a service matter. In paragraph 54, Mathew J. observed:-

"I do not think it expedient to extend the horizon of natural justice involved in the audi alteram partem rule to the twilight zone of mere expectations, however great they might be".

In S.P. Vasudeva Vs. State of Haryana and Others, AIR 1975 SC 2292. A 3-Judge Bench of the Hon'ble Supreme Court in paragraph 4 seem to lay down that an ad hoc appointment is for any special or particular purpose, so that it can be said that a person appointed on an ad hoc basis cannot be discharged from service till that purpose is over. Their Lordships, however, go on to observe that whether the appointment of the appellant was ad hoc or temporary he had no right to the post from which he was reverted. It appears that the 2-Judge Bench of the Hon'ble Supreme Court deciding Dr. (Mrs.) Sumati P. Shere's case had in mind the aforesaid observations about the nature of an ad hoc appointment. We, therefore, take the view that the decision in Dr. (Mrs.). Sumati P. Shere's case is not apposite.

In Oil and Natural Gas Commission and Another Vs. Dr. M.I. S. Iskander Ali, AIR 1980 SC page 1242. In paragraph 7, it was observed:-

"...It is obvious that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. The remarks, in the assessment roll, merely indicate the nature of the performance put in by the officer for the limited purpose of determining whether or not his probation should be extended.

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These remarks were not intended to cast any stigma. In the case of R.I. Butail Vs. Union of India, (1971) 2 SCR 55; (1971) 1 LAB IC (N) 2) this court while indicating the nature of assessment made by the reporting officer observed as follows:-

'These rules abundantly show that a confidential report is intended to be a general assessment of work performed by a Government servant subordinate to the reporting authority, that such reports are maintained for the purpose of serving as data of comparative merit when questions of promotion, confirmation, etc. arise'."

(ii) Chandra Kumari Vs. Union of India, 1992(3) SLR page 237 (CAT). This is a decision of a 2-Member Bench of the Principal Bench of this Tribunal. The applicant therein appeared in the Civil Services Examination, 1986 and was declared successful. She was selected for appointment

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as an Income-tax Officer. She was appointed by an order dated 27.11.1987. The appointment was on a probation for a period of 2 years. She was to remain at Nagpur for training during the aforesaid period. By an order dated 13.08.1990, her services were terminated under clause (iii) of the terms of the offer of appointment dated 27.11.1987 on the ground that her work and conduct during the period of probation had not been upto the mark and that she was not likely to be an efficient officer. The learned Members relied upon the judgment in Dr. (Mrs.) Sumati P. Shere's (Supra). We note that the learned Members have noted the case of Kaushal Kishore Shukla (Supra) and have observed that the principles laid down therein do not pertain to the matter in hand and they observed:-

"We need not dwell upon it at this stage".

The learned Members recorded their findings that on the facts and circumstances of the case before them, it could be said that the respondents did not act honestly in passing the order. Then comes the crucial words on which reliance has been placed: "Furthermore, in not conveying to her the defects in her work or deficiency in her performance, the applicant was deprived of a valuable right of making a representation against those remarks upon which the assessment of her performance was made". In paragraph 7 following observations are made:-

"Confidential roll reflects the assessment of the work done by the employer of the work of the employee. If the performance of the applicant was satisfactory or unsatisfactory, this assessment should have been conveyed to the applicant, otherwise the principles of natural justice will be infringed...."

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With respect we are unable to subscribe to the view taken by the learned Members that even a temporary Government servant on probation has a right of making a representation against entries made in his confidential rolls. We again do not agree with the learned Members that the assessment made by an officer should be conveyed to a temporary Government servant on probation, failing which principles of natural justice would be violated. The view taken by the learned Members runs contrary to the aforequoted declaration of law of their Lordships of Supreme Court in the case of Oil and Natural Gas Commission (Supra). In our opinion, the learned Members also glossed over the clear enunciation of law by the Hon'ble Supreme Court in Champaklal's case as well in Shukla's case. We, therefore, hold that the aforequoted observations of the learned Members cannot operate as a precedent.

(iii) Bhuwan Chandra Joshi Vs. State of U.P. and Another, 1993 Vol.5 S.I.R. page 680. This was a case where Joshi was initially appointed on a daily wages and was recommended to be appointed on a regular post of an orderly. The order to that effect was issued. However, Joshi was put on probation for a period of one year extendable by another year. His services were terminated during the period of probation. The judgment, it appears, is primarily based upon the decision of the Supreme Court in Sumati P. Shere's case. The following observations are pertinent:-

"...It only emphasised that if the services were to be discontinued it is proper and necessary that the employee should be told in advance that his work and performance are not upto the mark".

If these observations are read detached from the context, they may have different shape and they

will certainly go in support of the contention advanced by the applicant. The observations should be read in the context and setting of the case which was under consideration before the High Court. If the learned Single Judge intended to convey the proposition of law that whenever services of a temporary Government servant on probation are to be discontinued, it is necessary that the employee should be told in advance that his work and performance is not upto the mark, we, with respect, disagree. The reasons given by us for disagreeing with the views expressed in Chandra Kumari's case are apposite.

(iv) DR. (Mrs.) Sangeeta Narang and Others Vs. Delhi Administration Etc., 1988 Vol.6 ATC page 405. In this case it is held that the services of an ad hoc employee should not be terminated so long as there is need for manning of posts. However, termination can be ordered only if services are no longer required or performance of an ad hoc employee is unsatisfactory. In the case at our hands, the respondents aver that the services of the petitioner were terminated because his performance was not satisfactory. This case does not advance the case of the applicant.

This application fails and is dismissed but without any order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
MEMBER (A)

S.K. Dharon
(S.K. DHAON)
VICE CHAIRMAN

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