

11

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1019/2000
M.A.No.1421/2000

HON'BLE SHRI SHANKER RAJU, MEMBER(J)

New Delhi, this the 13th day of February, 2001

S.K.Indalia
s/o Shri Late Shambu Lal
RZ-316 (M)
Raj Nagar Part-II
Palam Colony
Near DDA Park
New Delhi. Applicant

(Applicant in person)

Vs.

1. National Capital Govt. of Delhi
Services Department
(Through Divisional Commissioner
Tees Hazari Court, Delhi)
2. Secretary
Rajya Sainik Board
1, Rajpur Road
Delhi. Respondents

(By Shri Devesh Singh with Shri Amit Singh, Advocate)

O R D E R (Oral)

Hon'ble Shri Shanker Raju, M(J)

Learned counsel for the applicant is not present even on second call but applicant is present in person. Heard the learned counsel for the respondents and perused the pleadings taken in this OA.

2. The applicant, who is an ex-service man had applied for the Government job and on recommendation of Staff Selection Commission, he was offered the post of LDC vide Memo. dated 12.8.1996 on probation for a period of two years from the date of his appointment. The applicant has consented the terms and conditions offered to him. In view of the

(P)

offer of appointment dated 12.8.1996, inter-alia, includes the clause 2(b) which is reproduced as under:

"The appointment may be terminated at any time by one month notice given by either side, viz; the appointee or the appointing authority without assigning any reason of terminating the service of the appointee forthwith or before expiration of the stipulated period of notice by making payment to him of sum equivalent to the pay and allowances or the unexpired portion thereof."

3. According to the applicant he had been performing his duties diligently without any adverse material against him. The applicant assails an order dated 28.7.1998 whereby his services have been terminated under Rule 5(1) of CCS (Temporary Service) Rules, 1965 by entitling him to claim a sum equivalent to the amount of his pay and allowances for the period of notice at the same rates immediately after joining in the service. Such notice fall short in this case.

4. The applicant challenges the order passed in an appeal vide order dated 20.10.1998, which was passed after considering his representation/appeal dated 31.7.1998. The applicant moved an MA 1421/2000 seeking condonation of delay in filing the present OA on the ground that after receipt of the order of termination he suffered an attack of acute depressive psychosis and was declared fit to resume his duties on 20.4.2000. Further, he has contended that in August, 1999, the applicant lost his father and was looking after the family as well as on 30.10.1999 his father-in-law also died because of that entire burden of the two families had come to his shoulders.

Vn

13

5. In these circumstances, he states that the delay in filing the present OA was ~~not~~ intentional ~~way~~ and on account of the reasons beyond his control. The applicant challenges the impugned order of termination on the ground that the same is resorted to under Rule 5(1) of CCS (Temporary Service) Rules, 1965 whereas in terms of OM dated 26.8.1967 the person appointed on probation cannot be terminated under Rule 5(1) of the CCS (Temporary Service) Rules, 1965. It has been further contended that as the services of the applicant was satisfactory and there was no adverse remarks against him as such the act of the respondents was arbitrary and illegal.

6. The respondents have refuted the claim of the applicant and vehemently opposed MA No.1421/2000 for condonation of delay on the ground that the reasons adduced by the applicant are vague and are absolutely false. According to the respondents, as alleged by the applicant that he has having acute depressive psychosis and was under treatment since 27.10.1998 to 20.4.2000 was absolutely false and the medical certificate produced by the applicant was also false and manipulated. In support of the claim, the respondents have produced a letter dated 22.9.2000, inter-alia, attaching the various applications made by the applicant for seeking employment by taking the benefit of ex-service man and these applications pertains to the period from 1.9.1998 to December, 1998. In this regard, it is contended that the applicant was seeking employment elsewhere and his

contention that he was having depressive psychosis is absolutely false and fabricated.

7. As regards on merits, it has been contended by the learned counsel for the respondents that the OM relied upon is only directory and the services of a probationer can be terminated under Rule 5(1) of CCS (Temporary Service) Rules, 1965 which are very much applicable in the case of the applicant. It is further contended that the work and conduct of the applicant during the period of probation was not upto the mark and he has been issued memos on five occasions dated 25.2.1997, 24.4.1997, 19.8.1997, 6.1.1998 and 3.2.1998 with a view to correct the applicant but despite issuance of these memos, the performance of the applicant has not been upto the mark. By resorting Rule 5(1) ibid, the services of the applicant has been terminated. It has been further stated that a probationer has no right to the service and an order of termination is simple without casting any stigma or it cannot be stated as illegal or unsustainable in view of the ratio laid down by the Apex Court in State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, 1991 SCC (L&S) 587.

8. The applicant in his rejoinder attached certain orders dated 13.4.1998 and 21.4.1998, passed by the respondents, whereby the period of absence of the applicant on which he has been issued notices is treated as leave of the kind due.

9. I have heard the learned counsel of the respondents and perused the pleadings as well as material available on the record in this OA. As far as the limitation is concerned the respondents have passed an order dated 20.10.1998, on appeal/representation made by the applicant, and the applicant in view of the Section 21 of the Administrative Tribunals Act, 1985 has one year to approach the Tribunal which was expired on 19.10.1999. The applicant has been filed the application on 8.5.2000, i.e., after a delay of about seven months. The grounds adduced by the applicant in support of his MA for condonation of delay are that he was having acute depressive psychosis and was under treatment. I have seen the medical certificate attached with the MA, filed by the applicant, which has been issued by Dr. R.Tripathy of Indu X-Ray Lab & Nursing Home. In this medical certificate, it has been mentioned that the applicant was suffering from acute depressive psychosis since 27.10.1998 and has been declared fit to resume his duties on 20.4.2000. The Doctor who issued the certificate to the applicant is not a psychiatrist. Apart from, the documents produced by the respondents clearly prove that during the period when it was alleged by the applicant that he had been suffering from acute depressive psychosis, he has been making representations for Government job in various departments taking the benefit of the ex-service man. In view of the evidence produced by the respondents, the certificate produced by the applicant does not inspire confidence. In this view of the matter, I feel that the grounds alleged by the applicant to

16

justify the delay in filing the present application are not justifiable and rational. In the absence of any justified ground taken by the applicant for delay in filing the present application, the MA 1421/2000 is rejected and as the OA is filed beyond the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985, the same is barred by limitation.

10. I also proceed to deal the case on merits. According to the applicant, he has been appointed under certain terms and conditions and one of the conditions prescribed in the order dated 12.8.1996 was that the appointment may be terminated at any time by one month notice given by either side or payment of sum equivalent to the pay and allowances or the unexpired portion thereof. The respondents resorted to Rule 5(1) of CCS (Temporary Service) Rules, 1965. The OM relied upon by the applicant to contend that it excludes operation of CCS (Temporary Service) Rules, 1965, if the probationer is governed terms and conditions of his appointment. The OM dated 26.8.1967 is reproduced as under:

"(5) Non-applicability of Rule 5 for termination of service in the case of probationers/persons on probation. - A question has arisen whether this rule should be invoked also in the case of persons appointed on probation, where in the appointment letter a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any), has been provided. The position is that the CCS (TS) Rules do not specifically exclude probationers or persons on probation as such. However, in view of the specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any) it has been decided, in consultation with the Ministry of Law, that in cases where such a provision has been specifically made in the letter of appointment, it would be desirable to terminate the

15

services of the probationer/person on probation in terms of the letter of appointment and not under Rule 5(1) of the CCS (TS) Rules, 1965.

11. I have carefully gone through the said OM dated 26.8.1967 which is not a mandatory guideline. What has been emphasised is that in the event, if the services of probationer is to be dispensed with by way of termination then it is desirable to take resort to the terms of the letter of appointment and not under Rule 5(1) of CCS (TS) Rules, 1965. We find that the respondents while terminating the services of the applicant had complied with the conditions of letter of appointment and by terminating the services of the applicant forthwith made him entitled to a sum of pay and allowances for the period on notice which was also one of the conditions of terminating the services of a probationer in accordance with Clause 2(b) ibid of the offer of appointment. In my view, the form of order would not be relevant for the purpose of this OA. What is relevant is that the respondents have complied with the pre-requisite conditions of termination and also resorted to terminating the services of a probationer by following clause 2(b) ibid. In my view, being a directory provision, the OM dated 26.8.1967 is not mandatory and binding on respondents. Apart from services of a probationer in a Govt. service, when he is appointed on temporary basis, can be validly terminated, resorting to Rule 5(1) of CCS (TS) Rules. As such the order of termination is legal.

12. As regards the claim of the applicant that his services have been terminated, under the garb of a simple order, whereas the same has been founded on his specific misconduct of his remaining absent as

18

he was issued several memos and subsequently his period of his absence was treated as leave of kind due. From the perusal of the order of termination the same ex-facie is neither punitive nor caste any stigma upon the applicant. Apart from it, the respondents' contention that the applicant's performance during the period of probation was not upto the mark is also relevant. A probationer has no right to the service and the same can be dispensed with by a simple order of termination in case, due to lack of his performance, the respondents are not inclined to continue with his services. In this view of mine, I am fortified by a ratio of the Apex Court in Dipti Prakash Benerjee Vs. Satyendra Nath Bose, National Centre for Basic Sciences, Calcutta & Others, 1999 (3) SCC 60. As no enquiry has been held to ascertain the misconduct of the applicant by way of appointing an enquiry officer and further going ahead with the enquiry, I feel that the order of termination is simple order of termination and not punitive as contended by the applicant.

13. In view of the discussion made above, I am of the opinion that the order passed by the respondents terminating the services of the applicant as well as the order rejecting the representation are perfectly legal as per the terms and conditions mentioned in his offer of appointment. Apart from it this OA is also barred by limitation. I find no merit in the application, the same is accordingly dismissed. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

/RAO/