

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 908 of 2000New Delhi, this the 2nd day of January, 2001

HON'BLE MR. KULDIP SINGH, MEMBER(JUDL)

Smt. Sunita Devi W/o Late Shri Ram Kishan
 Ex-Matron in Central Jail Tihar,
 New Delhi
 R/o Village & P.O. Dhansa, New Delhi-73
 Address for service of notices:
 C/o Shri Sant Lal, Advocate
 C-21(B) New Multan Nagar,
 Delhi-110 056.

+APPLICANT

(By Advocate: Shri Sant Lal)

Versus

1. The Govt. of National Capital Territory (NCT) Delhi
 through the Secretary (Home)
 5, Sham Nath Marg,
 Delhi-1210 054.
2. The Inspector General of Prisons,
 Delhi, Prisons Headquarter, Near
 Lajwanti Garden Chowk,
 Janakpuri, New Delhi.

RESPONDENTS

(By Advocate: Shri Rajinder Pandita)

ORDERBy Hon'ble Mr. Kuldip Singh, Member(Judl)

1. The applicant who was employed as a Matron in the Central Jail Tihar was still on probation period vide letter dated 5.3.97. While she was continuing on temporary basis, she was issued a memo Annexure A-1 vide which her services had been terminated. Against this termination order also she preferred an appeal to the competent authority which was also rejected. In this OA the applicant has impugned the letter of termination as well as the order passed on the appeal by the competent authority.

2. In the grounds taken to challenge the

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termination order the applicant has stated that the impugned order of termination on the face of it shows that it is a post dated draft order dated 15.11.1997 without the signatures of the competent authority, thus it is no order in the eyes of law and this post dated order was issued with the endorsement dated 10.11.1997 by the Dy.IG (Prisons) who is an authority lower than the appointing authority and the said order was served on the applicant on 11.11.1997 and was enforced on the same day. Since this order was issued by an authority without competence and jurisdiction, so it is legally not sustainable.

3. Besides that the applicant has also alleged that though the face of the order of termination is not a simpler termination of temporary service but it is founded upon an alleged misconduct so the order is stigma upon the applicant and same has been passed without holding any enquiry, as such the same is liable to be quashed.

4. The OA is contested by the respondents. The respondents tried to justify the order and pleaded that it has been issued properly by the competent authority. Besides that the respondents have also pleaded that applicant while attending the Jail No.1 was searched by two other matrons and prohibited articles i.e., two packets of tobacco (Navia Brand) were recovered from her which were hidden inside her clothes and applicant had confessed that she was carrying two packets of tobacco in

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the female ward. Thus the applicant, being a Government servant showed lack of integrity in performing duties in the sensitive department like Jail, misconducted herself and that is why her services were terminated under Rule 5 of the CCS (Temporary Service) Rules, 1965.

5. I have heard the learned counsel for the parties and have gone through the record of the case.

6. Since there was dispute regarding the issuing of post dated termination order so I had summoned the file of the department. There is nothing on record to indicate how the date of 15.11.1997 has been put up on the letter. The respondents in their counter have stated that despatch number was put up on the letter as on 15.11.1997. But if that contention is to be accepted then how the letter was delivered to the applicant before 15.11.1997. Thus it appears that proper mind has not been applied while issuing the letter, rather it calls for an inference that the letter had been issued with a biased mind without getting the approval of the competent authorities.

7. The counsel for the applicant has also relied upon a judgment reported in 200 (1) SC SLJ page 273 entitled as V.P. Ahuja Vs. State of Punjab and Others wherein the service of an employee was terminated on the ground that he had failed in the performance of duties administratively and technically. Neither any enquiry was held nor an opportunity was given to the

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applicant, so the impugned order was held to be not sustainable and was quashed and in that very judgment the Hon'ble Supreme Court has held as follows:-

"3. The affidavit filed by the parties before the High Court as also in this Court indicated the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant".

8. In this case also since the order of termination during the probation period of the applicant was passed on the allegations that she had misconducted herself while conducting her duties, so I find that the ratio of the judgment of the Hon'ble Supreme Court in the case of V.P. Ahuja (Supra) fully applies to the case of the appellant and as such the exercise of the power under Rule 5 of the CCS (Temporary Service) Rules, 1965 could not have been resorted to by the respondents. Hence, the OA has to be allowed.

9. In view of the above, the OA is allowed and the impugned order of termination of the service is quashed. The respondents are directed to reinstate the applicant in service with all the consequential benefits within a period of 2 months from the date of receipt of a copy of this order. However, the respondents would be at liberty to conduct enquiry as per rules. No costs.

Kuldeep Singh
(KULDIP SINGH)
MEMBER (JUDL)