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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.917/2000

New Delhi this the 3rd day of September, 2001.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Sh. Rajinder Singh-II,
Warder Roll No.773,
S/o Sh. Prem Raj,
R/o 193-Aliganj,
Kotla Mubarakpur,
New Delhi.

-Applicant

(By Advocate Shri Y.D. Nagar)

-Versus-

1. Inspector General of Prisons,
Central Jail, Tihar,
New Delhi.

2. Deputy Inspector General of Prison,
Central Jail, Tihar,
New Delhi.

3. D.S.P. Prison, Central Jail,
Tihar, New Delhi.

-Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

In the present OA the applicant has assailed an order of termination passed by the respondents on 10.11.97, wherein his services have been dispensed with under Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as CCS (TS) Rules, 1965).

2. Briefly stated the applicant was appointed after the recommendation of the Staff Selection Board (for short, SSB) as Warder in the temporary capacity on probation for a period of two years. One of the conditions in the appointment letter was that in case the applicant

fails to complete the period of probation to the satisfaction of the competent authority it will render him liable to discharge from service, without any notice.

3. The learned counsel of the applicant states that the order of termination^h is though an order simpliciter but in fact if the ~~order~~^h is lifted it is an order by way of punishment founded on an alleged misconduct of the applicant of smuggling tobacco and drugs. The aforesaid misconduct has not happened and if at all^h happened for the sake of presumption without admitting the applicant should have been accorded a reasonable opportunity to defend by way of holding a disciplinary proceeding or giving him a reasonable opportunity. The learned counsel states that in case it is found from contents of the preceding circumstances that allegations levelled against him which ultimately ensue termination are casting stigma, the order of termination is bad in law. The learned counsel of the applicant has placed reliance on a decision of the Apex Court in V.P. Ahuja v. State of Punjab & Ors., JT 2000 (3) SC 1 as well as on Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Others, JT 1999 (1) SC 396.

4. The learned counsel of the applicant as regards limitation and his MA for condonation of delay filed along with this OA stated that the applicant has not^h fault of his to have approached this Tribunal in the year 2000. He stated that his application was previously filed on 27.7.98 and as the previous counsel of the applicant has kept the papers with him and have not removed the objection, he ultimately removed the same in 2000 and as such the OA which has been previously filed in 1998 was

pending in the Registry but was numbered in 2000. The learned counsel stated that in view of the ratio of Miss Santosh Mehta v. Om Prakash, 1980 RLR 355 the applicant cannot be punished only because the Advocate has behaved unprofessionally in the matter. The learned counsel has also failed to explain as to why a representation has not been filed as mandated under Rule 5 (2) of the CCS (TS) Rules against the order of termination.

5. On the other hand, strongly rebutting the contentions of the applicant the learned counsel of the respondents has taken a preliminary objection with regard to limitation and by placing reliance on the ratio of the constitutional bench decision of the Apex Court in S.S. Rathore v. State of M.P., AIR 1990 SC 10 as well as P.K. Ramachandran v. State of Kerala & Anr., JT 1998 (7) SC 21 contended that the present OA is hopelessly barred by limitation as provided under Section 21 of the Administrative Tribunals Act, 1985 and the grounds taken by the applicant for condonation of delay are not at all reasonable and justified. Further placing reliance on S.S. Rathore's case (supra) and by drawing my attention to the provisions of Section 20 of the Administrative Tribunals Act it is stated that the OA would not be admitted unless the statutory remedies are exhausted. By further contending that as per Rule 5 (2) of the CCS (TS) Rules there is a statutory remedy of making a representation against an order of termination which has, admittedly, not been exhausted by the applicant and as such the OA is not maintainable.

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6. Further on merits it is stated that the order of termination is as per the terms and conditions on which the applicant was appointed and as he has failed to complete the probation period satisfactorily and his work and conduct was also not satisfactory as he was involved in a case of smuggling of tobacco and drugs inside the Jail premises, assessing on the circumstances and the performance of the applicant it was decided to dispense with his services under the clauses of the appointment letter for which they were legally entitled and to substantiate this he places reliance on a decision of the Apex Court in State of U.P. & Anr. v. Kaushal Kishore Shukla, JT 1991 (1) SC 108 wherein it is held that during the probation period on unsatisfactory service record the termination can be resorted to which will be a simple order of termination without involving any misconduct and the bad performance would only be a motive for the order. In this view of the matter it is stated that the order of the termination is also not legally assailable and is valid in all respects.

7. I have carefully considered the rival contentions of the parties and perused the material on record. The applicant admittedly has not exhausted the statutory remedy of representation as provided under Rule 5 (2) of the CCS (TS) Rules. As per the provisions contained in Section 20 of the A.T. Act it is mandated upon a Government servant to have exhausted all the available remedies to him before resorting to this court. The learned counsel of the applicant has also not shown as to what was the urgency to have approached this Court and the reasons for not availing the statutory remedy. As the Apex Court in a constitutional bench decision in the case of

S.S. Rathore (supra) has held that failure to exhaust the remedy would render the OA inadmissible for the Tribunal. I am also fortified by the said decision and hold that having failed to exhaust the statutory remedy available to the applicant this OA is not ~~maintainable~~^h maintainable^h.

8. As regards limitation, the learned counsel of the applicant states that it is on account of the fault of the previous counsel that the objection have not been removed, despite accord of sufficient opportunities and the applicant later on when came to know about this fact have removed the object and filed this OA in 2000, is not justifiable. The law cited by the applicant to this regard is not applicable to him. Here is a case where the OA was filed in 1998 and thereafter neither the previous counsel nor the applicant were conscious and have shown their ignorance towards the pendency of the OA under objection. Ultimately the same have been removed in 2000 which will not given them a fresh plea of limitation, which has already started running from 1998, i.e., exactly one year from the date when the impugned order was passed. Having regard to the cases of P.K. Ramchandran and S.S. Rathore (supra) the present OA is clearly barred by limitation and the MA for condonation of delay is rejected.

9. However, I deem it proper and necessary in the interest of justice to also deal with the merits of the case. The applicant was appointed in pursuance of the recommendation of the SSB on 27.2.96 and at the time of his termination i.e. 10.11.97 he was yet to complete the maximum period of probation of two years. One of the clauses of the appointment letter shows that in case it is found by the respondents that the applicant has not

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completed the probation period upto their satisfaction it will render him liable for discharge. Having regard to the ratio laid down in Dipti Prakash Banerjee's case (supra) the resort of the applicant to claim that the order is stigmatic even though it is innocuous and simple in nature would be of no avail to him. What has been alleged against him by the respondents in their counter-reply is that as the applicant has been found to have indulged in smuggling of tobacco and drugs inside the Jail premises his conduct was not found suitable to retain him as Warder as he failed to maintain his integrity during the period of probation and it was decided to dispense with his services. Admittedly, ^hnot preliminary enquiry or departmental enquiry was held against the applicant in this regard. Having regard to the ratio in Dipti Prakash Banerjee's case (supra) the Apex Court has held that if on misconduct the findings are arrived at the back of the applicant without holding a regular enquiry the simple order of termination is to be treated as founded on the allegations and will be bad, but if the enquiry has not been held and no finding has been arrived at and the employer is not inclined to conduct an enquiry but at the same time did not want to continue the employee against whom there were complaints it would be only a case of motive and the order would not be bad in law. Having regard to the aforesaid ratio and the facts and circumstances of the present case I am satisfied that the allegation levelled against the applicant in the counter-affidavit by the respondents only constitute a motive, as such the order of termination is not ^{stigmatic} ~~tenable~~ ^{but} a simple order of termination as per the terms and conditions of the appointment order and also the services of the applicant have been dispensed with on the decision of the respondents. The applicant having failed to

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complete the probation period satisfactorily, the respondents cannot be forced to continue the employee whom they do not want in case his services are not upto their standards and lacking in performance. In this view the ratio of Kaushal Kishore Shukla's case (supra) squarely applies to the facts and circumstances of the present case.

10. In the result I find no legal infirmity in the order of termination. The OA is found bereft of merit and is dismissed, but without any order as to costs.

S. Rajm
(Shanker Raju)
Member (J)

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