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In the Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No. 1836/89.

Date of decision: 19.8.94.

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Shri P.C. Jain,
s/o Shri Ghambirmal Jain,
R/o No. 207, Santoshi Apartments,
Novgardh Road, BHAYANDER (EAST),
Dist. Thane, Maharashtra-401105.
(By Shri S.C. Luthra, Advocate)

.. Applicant

versus:

1. Union of India
through Secretary,
Ministry of Textiles,
Udyog Bhavan,
New Delhi-110 011.
2. Textile Commissioner,
New C.G.O. Building,
New Marine Lines,
Bombay-400 020.
3. Shri K.S. Desikan,
Director,
(Chemical Processing Section),
Office of Textile Commissioner,
New C.G.O. Building,
New Marine Lines,
Bombay-400 020.

(By Advocate Shri Madhav Panicker)

O_R_D_E_R

[Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)] 7

The applicant, who was working as Deputy
Director (Chemical Processing) in the Office of
Respondent No. 2, has been terminated from service
by Order dated 7th April, 1989 (Annexure A-1).

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Prior to this Order, he had also received certain adverse remarks in his Annual Assessment Reports for the years 1986 and 1987 vide Office Memoranda dated 21.7.1987 and 2.5.1988 (Annexures A-2 and A-3) and also Office Memo. dated 31.8.1988 whereby his probation period had been extended by one more year w.e.f. 21.1.1988 to 20.1.1989 (Annexure A-11). This O.A. has been filed by the applicant challenging the validity of these Orders, culminating in the order of termination of his services (Annexure A-1).

2. The brief facts of the case are that the applicant was appointed as Deputy Director (Chemical Processing) vide Memorandum dated 3rd October, 1985 on a temporary basis with probation period of two years from the date of joining the post. He joined the post on 21.1.1986 under Respondent No. 3 i.e. Director of the Section, who was his immediate superior namely, Shri K.S. Desikan. According to the applicant, Respondent No. 3 wanted the applicant to be out of the job and had, therefore, taken the opportunity to harm him at the first available chance. The applicant alleges that Shri Desikan had directed the applicant verbally to grant permission to sell certain material to a particular company to which

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he had objected. He has referred to certain detailed notings on the file with regard to this matter in which he has alleged that Shri Desikan has, inter-alia, dis-regarded the order of his superior with mala fide intention and also nurtured a grudge against the applicant due to his independent thinking in the matter. The second allegation made by the applicant is that Shri Desikan had counselled the applicant not to recommend the case of a party, which according to him, was for ulterior motives and later on one of the parties, namely, Shri Kacheriwala had met Shri Desikan at his residence. In proof thereof, the applicant has produced the original visiting card on which, he states, that Shri Desikan had written his address in his own hand-writing. According to the applicant respondent No.3 had acted in a prejudicial and mala fide manner against him. He has filed another O.A. 1936/90 challenging the recording of the adverse entries which is ^B ~~also~~ dealt with separately.

3. The second main ground taken by the applicant for challenging the termination order is that -

- (i) On appointment to Government service, the applicant had acquired a 'status' and he is governed by the rules made under Article 309 of the Constitution. As such, rule 5 of

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the Temporary (Services) Rules, 1965 has to be complied with which has not been done in his

case. He relies upon the judgment of the Supreme

Court in *UOI & Ors v. Arun Kumar Roy* [ATR 1986 SC 61].

In this case the Hon'ble Supreme Court held -

" It is now well settled that a Government servant whose appointment though originates in a contract, acquires a status and thereafter is governed by his service rules and not by the terms of contract. The powers of the Government under Article 309 to make rules, to regulate the service conditions of its employees are very wide and unfettered. These powers can be exercised unilaterally without the consent of the employees concerned. It will, therefore, be idle to contend that in the case of employees under the Government, the terms of the contract of appointment should prevail over the rules governing their service conditions. The origin of service often times is contractual. Government. There is always an offer and acceptance, thus bringing into being a completed contract between the Government and its employees. Once appointed, a Government servant acquires a status and thereafter his position is not one governed by the contract

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of appointment. Public law governing service conditions steps in to regulate the relationship between the employer and employee."

4. The Respondents have refuted the above averments and contend that the termination order dated 7th April, 1989 is valid. As per the terms and conditions of the offer of appointment contained in the Memorandum dated 4th October, 1985 it is stated that though the post is permanent, the appointment of the applicant is only on temporary basis and the applicant will be on probation for a period of two years which may be extended or curtailed at the discretion of the Appointing Authority. The appointment will also be subject to be terminated by the Government without any notice during the probationary period and thereafter with one month's notice on either side. They have also refuted the allegations made by the applicant regarding the motives attributed to Respondent No.3 as being without any justification or any evidence. They have also stated that the allegations of mala fide attributed to Respondent No. 3 has been got verified by them and these have not been borne out on the facts. The applicant having been appointed on 21.1.1986, during his first year of probation ending on 21.1.1987, the confidential report

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for the period ending 20.1.1987 was furnished by Respondent No.3 in his capacity as the Reporting Officer and the same was reviewed by Additional TXC (T) as Reviewing Officer. After obtaining the approval of the Textile Commissioner, the remarks were duly communicated to the applicant on 21.7.1987 (Annexure-A-2).

5. According to the Respondents, despite communicating the shortcomings of his first year's performance vide memorandum dated 21.7.1987, the applicant did not show any improvement in the second year of probation. The unsatisfactory performance in the second year was also communicated to the applicant on 2nd May, 1988. As the confidential report of the applicant for the year 1986 contained adverse remarks in certain respects, the same were also communicated to the applicant on 23.6.1988; the applicant's representation dated 15.7.1988 against these adverse remarks was duly considered and then rejected. In the communication addressed to the applicant dated 31.8.1988(Ann.A 11), in order to give another chance to the applicant, the competent authority extended the probation period of the applicant for one more year i.e. with effect

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from 21.1.1988 to 20.1.1989. The applicant's performance during the extended period of probation was assessed by different officers. Although he had to be posted only under Respondent No.3 due to the nature of his work, but he was given additional charge of work under a different officer namely, Dr. T.V.K. Srivastava so that a fresh and independent assessment of his work could be made by another officer. The Respondent's contention is that even during the extended period of probation, the applicant's work was not found satisfactory as per the assessment of the officer under whom he was placed and after considering all aspects, the services of the applicant were terminated and communicated vide order dated 7th April, 1989. Hence, they pray that this O.A. is not sustainable and may be rejected.

6. As directed by our order dated 19.4.94, the Respondents had produced the relevant files of the applicant. On perusal of the records in the case, including the original files, we find that there is no substance in the allegation of mala fide made against Respondent No.3. The Respondents have also conducted independent enquiry and come to the conclusion that the allegation made by applicant

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against Respondent No.3 are not borne out on the facts.

Mere allegation of mala fide or suspicion against the superior officer is not sufficient to establish this ground.

7. Regarding the question whether the applicant's services can be terminated as per the Service Rules and not by terms of the contract, we have perused the judgment of the Supreme Court in Union of India v. Arun Kumar Roy

[ATR 1986 SC 61]. In a later judgment of the Supreme Court on the same point in Triveni Shankar Saxena v. State of U.P.

[AIR 1992 (Vol.79) 496-502], the court followed another decision in State of U.P. v. Kaushal Kishore Shukla

[(1991) 1 SCC 691 - a decision of three judges]. The

Supreme Court in Saxena's case quoted the following observation made in Shukla's case, namely, -

"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

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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."

The Apex court held-

" A temporary government 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 the contract providing for such termination
or under the relevant statutory rules regulating
the terms and conditions of temporary government
servants. A temporary government servant can,
however, be dismissed from service by way of
punishment. Whenever, the competent authority is
that
satisfied/the work and " conduct of a temporary
servant is not satisfactory or that his
continuance in service is not in public interest
on account of his unsuitability, misconduct or
inefficiency, it may either terminate his services
in accordance with the terms and conditions of the

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service or the relevant rules or it may
decide to take punitive action against
the temporary government servant. If it
decides to take punitive action it may hold
a formal inquiry by framing charges and
giving opportunity to the government servant
in accordance with the provisions of Article
311 of the Constitution".

" It must be borne in mind that a temporary
government servant has no right to hold
the post and termination of such a government
servant does not visit him with any evil
consequences. The evil consequences as held
in Parshotam Lal Shingra case' do not include
the termination of services of a temporary
government servant in accordance with the
terms and conditions of service."

8. Having regard to the later decisions of the
Supreme Court, referred to above, it is, therefore, possi-
ble for the Government to terminate the services of the
applicant who was holding the post of Deputy Director
on a temporary basis in accordance with the terms and
conditions of service or under the relevant statutory
rules regulating the terms and conditions of temporary
Government servants. The applicant's allegations to the
contrary that since he has acquired a status, he can only
be terminated under Rule 5 of the CCS (Temporary Service)
Rules, 1965 is without substance and is rejected.

9. We have perused the original Annual Confidential

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Reports of the applicant and have found several adverse entries about the unsatisfactory performance of the applicant during his initial period of probation and extension. The order of termination is an order simpliciter which purports to terminate the services of the applicant forthwith i.e. w.e.f. 7.4.1989 in terms of para 2 of the memorandum dated 4.10.1985, which had set out the terms and conditions of his appointment. During the probationary period, the applicant was liable to be terminated without notice and thereafter at one month's notice from either side. The applicant has not brought to our notice any material that he stands automatically confirmed after the probation period which was extended vide memo. dated 31st August, 1988 upto 20.1.1989. The Respondents have relied on the judgment of Supreme Court in Kedar Nath Behl. v. The State of Punjab and others [AIR 1972 S.C. 873] and contended that this was not a case of automatic confirmation in the post and the applicant was still on probation at the time when the termination order had been passed.

10. In the facts and circumstances of the case, following the decision of the Supreme Court in Kedar Nath Behl v. The State of Punjab and Others (supra),

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we find that the applicant has continued in the post as probationer till he was terminated from service under the terms and conditions of his appointment letter. The second ground taken by the applicant is also rejected.

11. In the facts of this case, we reject the applicants plea of mala fide and prejudice raised against respondent No. 3. In the result, we find that this is not a case which warrants any interference. The application is dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Member (A)