

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :PRINCIPAL BENCH  
NEW DELHI.

O.A. 285/88.

Om Prakash Maurya ... Applicant.  
versus

Union of India and others ... Respondents.

P R E S E N T :

The Hon'ble Shri B.C.Mathur, Vice Chairman(A).

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman(J).

For the applicant :- Mr R.L.Sethi, Advocate

For the respondents - Mr M.M.Sudan, Advocate.

Date of hearing- 13.8.90.

Date of Order - 17.8.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :

The applicant was appointed to the post of Social Worker under the respondents with effect from 2.1.1986. His grievance is against the order dated 21.2.1987 terminating his services with effect from 1.1.1987. It is alleged that the order is violative of Article 311 of the Constitution of India. There is also the plea that the post is still continuing and juniors to the applicant are in service.

2. In the reply filed on behalf of the respondents, it is stated that the appointment of the applicant was only on adhoc basis and pending completion of the verification of his character and antecedents by the competent police authority. It is stated that on his transfer from G.B.Pant Hospital to the Maulana Azad Medical College with effect from 13.2.1986, the applicant remained away from duty till 30.5.1986 and virtually deserted his duty. It is pointed out that after joining duty on 31.5.1986 he was involved in an irresponsible behaviour and misconduct as a result of which the Head of the Department recommended that his services may be terminated. It is stated that on 10.1.1987 a show cause notice was issued to the applicant regarding his misconduct, but without giving reply he tendered his resignation on 21.1.1987.

3. We have heard counsel on either side and have also perused the concerned file made available by the counsel of the respondents.

4. It is clear from the pleadings as well as the concerned file that the termination of the service of the applicant was on account of the alleged misconduct on the part of the applicant. There is substance in the plea of the applicant that the termination is violative of Article 311 of the Constitution of India, as a show cause notice was issued to the applicant calling for his explanation with respect to the alleged misconduct. He sent a reply dated 21.1.1987. He did not mention anything with respect to the alleged misconduct. Instead, he submitted that he is tendering his resignation from service. Admittedly, the respondents have not accepted his <sup>and hence</sup> ~~As such, this is not a case where~~ resignation, ~~As such, this is not a case where~~ the resignation has not taken effect. The applicant was appointed to the post of Social Worker on the recommendation of the Staff Selection Board. As such, though the appointment was only adhoc, before terminating his services on the ground of misconduct, compliance with the mandatory provisions of Clause (2) of Article 311 of the Constitution should have been made. That having not been done, the order of termination of the service of the applicant is bad in law.

5. Besides, the order of appointment provides that one month's notice has to be given before effecting termination of service. Neither the said notice, nor payment of any amount towards pay and allowance for that period has been made.

6. It is seen that the order of termination has been passed only on 21.2.1987. The termination has been given effect to with effect from 1.1.1987. That again is another vitiating factor with respect to the termination.

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7. In view of the above, we quash the order dated 21.2.1987 under which the services of the applicant were terminated. The applicant shall be reinstated in service forthwith. He shall be allowed consequential benefits except the wages during the period when he was out of service. It is made clear that this order shall not preclude the respondents from considering the letter of resignation stated to have been submitted by the applicant and disposing it off in accordance with law.

8. The application is disposed of as above.

*17.8.90*  
(G.Sreedharan Nair)

Vice Chairman(J)

*17.8.90*  
(B.C.Mathur)  
Vice Chairman(A).

S.P.Singh/  
16.8.90.

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