

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 666/88

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T.A. No.

DATE OF DECISION 16.8.1991

Shri K.K. Mishra,

Petitioner Applicant

Shri T.N. Jha

Advocate for the Petitioner(s) Applicant

Versus

Union of India through the
Secy., M/Human Resource Dev. &

Respondent

Ors.
Shri M.L. Verma

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as Deputy Educational Adviser (Sanskrit) in the Department of Education, Ministry of Human Resource Development, has challenged in this application filed by him under Section 19 of the Administrative Tribunals Act, 1985 the impugned order dated 1.1.1988 whereby he was discharged from the post of Deputy Educational Adviser (Sanskrit). He has also prayed that he should be declared confirmed on the said post after successful completion of the period of one-year probation on the basis of the recommendation made in the Assessment Report given in April,

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1987 and forwarded to the U.P.S.C. He has also challenged the extensions of his probation on the ground of mala fides and bias of Shri Anil Bordia, Education Secretary.

2. As allegations of mala fides have been made against Shri Anil Bordia, the applicant has, with the leave of the Tribunal, impleaded him as Respondent No.3. Shri Anil Bordia has also filed a counter-affidavit in addition to the one filed by the other respondents.

3. The applicant is a direct recruit Deputy Educational Adviser. The U.P.S.C. recommended him for the said post and he was offered appointment by memorandum dated 6th March, 1986 which provides, inter alia, that the post was a temporary one, that the appointment may be terminated at any time by a month's notice given by either side, and that the period of probation is one year from the date of appointment which may be extended or curtailed at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority, will render the appointee liable to be discharged from service.

4. According to the applicant, the trouble started for him due to the bias of Shri Anil Bordia, the Secretary of the Department in which he had worked

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after one year of his service. His period of probation was extended initially for a period of six months from 4.4.1987 to 3.10.1987 by order dated 10.7.1987. It was again extended upto 3.1.1988 by order dated 4.12.87.

5. The impugned order of discharge was passed on 1.1.1988, according to which the services of the applicant were discharged w.e.f. the forenoon of 4.1.1988 in terms of clause (iv) of para.2 of the terms and conditions of the offer of appointment made to him vide memorandum dated 6.3.1986, and on the expiry of the period of probation extended by O.M. dated 4.12.1987.

6. It is the case of the applicant that Shri Anil Bordia has been instrumental in extending the period of his probation twice and in discharging him from service. He has stated that his work performance and conduct throughout had been good.

7. In support of his allegation of bias on the part of Shri Anil Bordia, the applicant has stated that he did not become a party to giving undue favour to one, Dr. Madan Mishra, who was the Director of Rashtriya Sanskrit Sansthan which is an institution under the Ministry of Human Resource Development, Department of Education. The affairs of the said institution are

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managed by the Sanskrit Division of the Department.

The applicant was Divisional Head of the Sanskrit Division. Dr. Mishra, Director of the Sansthan, was reaching the superannuation age of 58 years on 5.6.1987.

The applicant initiated a note suggesting alternative arrangements and soliciting orders in the matter. No orders were passed by the Government and Dr. Mishra was continuing on the post even at the time of filing of the application without any specific orders or approval of the Appointments Committee of the Cabinet, which was essential for continuing any person on such a post beyond the age of superannuation. The applicant has stated that he subsequently learnt that this unusual and irregular act has been possible because Shri Bordia was personally interested in Dr. Mishra. He has alleged that Shri Bordia had a long family association with Dr. Mishra and both belonged to Rajasthan. In addition, Dr. Mishra had worked for years as Private Secretary to Shri Bordia's father, Dr. K.L. Bordia, then associated with the Vidya Bhawan of Udaipur.

8. Around this period, there was a proposal to give Lal Bahadur Shastri Kendriya Sanskrit Vidyapeeth the status of 'deemed University'. It appears that Dr. Mishra was being tipped for the post of Vice-Chancellor

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of the deemed University. When enquiries were made about him from the Sanskrit Division, the applicant did not give a clean chit to him as he had been involved in a number of criminal cases and irregularities and his conduct was being enquired into by the C.B.I. Shri Bordia was displeased with the applicant in this regard.

9. The applicant has stated that he was called to meet Shri Bordia in a meeting held with him in his chamber on 15th July, 1987 at 3.00 p.m., when he abused the applicant in the presence of his junior colleague and another officer and asked him to resign from the service and go elsewhere. He further threatened him with dire consequences in case of non-compliance of his verbal orders. The applicant sent a representation to the Secretary on 6.8.1987. Thus, according to him, Shri Bordia found that his presence in the Sanskrit Division was very inconvenient and, therefore, decided to get rid of him.

10. The applicant has stated that the decision to extend his probation for the second time was communicated to him on the 10th July, 1987 which was received by him on 13th July, 1987. This clearly indicates that the

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decision to extend the probation was taken before the applicant had met Shri Bordia on 15th July, 1987, as stated by him.

11. The official respondents have denied in their counter-affidavit the allegations of mala fides brought against Shri Bordia. Shri Bordia has also filed a separate counter-affidavit wherein he has refuted the allegations made against him. The respondents have sought to justify the termination of the services of the applicant on the ground that his performance was not up to the mark. Shri Bordia has also denied the allegation of mala fides made against him. Shri Bordia has stated in his separate counter-affidavit that he did not want to show any undue favour to any person, including Dr. Mishra. He has stated that he had no personal interest in Dr. Mishra and that there had never been any family association with him. He has also denied the allegation that Dr. Mishra ever worked as the Private Secretary to his father. He has further stated that while working as Additional Secretary and Secretary, he had paid visits to the various Sections off and on. He had noticed during the visits that the

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work of Sanskrit Division was unsatisfactory and had cautioned the applicant to improve the performance of the Division.

12. We have gone through the records of the case and have considered the rival contentions. The applicant has relied upon numerous rulings^{*} and office memoranda issued by the Government in support of his contention. The respondents also have relied upon some rulings.^{**} We have duly considered them. The respondents have also placed before us the relevant file containing the Assessment Reports pertaining to the applicant.

13. The applicant is a direct recruit in whose case the period of probation stipulated in the recruitment rules is one year. There is, however, no bar to extending the probation period under the recruitment rules. When the applicant was given the offer of appointment, it was clearly stipulated therein that the period of probation may be extended or curtailed at the discretion of the competent authority and that

* Rulings relied upon by the applicant's side:

1988 (Suppl.) S.C.C. 669; 1977 (3) S.C.C. 42;
1975 (1) S.C.R. 814; A.T.R. 1988 (1) S.C. 774;
A.I.R. 1986 S.C. 1626; A.I.R. 1979 S.C. 429;
1983 (1) S.C.C. 124.

**Rulings relied upon by the respondents' side:

1988 (6) A.T.C. 274; 1988 (2) SLJ 47; 1987 A.T.C. (4) 660;
A.I.R. 1991 S.C. 73; A.I.R. 1986 S.C. 735.

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failure to complete the period of probation to the satisfaction of the competent authority, will render the applicant liable to be discharged from service. The applicant was discharged from service during the extended period of probation. The only question to be considered is that there had been any mala fides on the part of the respondents and whether the Assessment Reports are such that the applicant should have been retained in service.

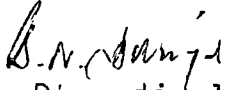
14. In our opinion, the applicant has not substantiated the allegation of mala fides made against Shri Anil Bordia, Education Secretary. There is nothing to disbelieve his version that he had made surprise visits to the various Divisions under him and that he had noticed the performance of the Divisions visited by him. Such visits are common in Government offices. It appears from the notings on the file that the decision to discharge the applicant from service as per the terms of his appointment, was taken by the respondents after obtaining the approval of the then Minister for Human Resource Development. It is also noticed from the file that the applicant will revert to N.C.E.R.T., where he has a lien on the post of 'Reader'.

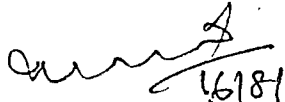
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15. It is not part of the judicial function to sit in judgement over the assessments made by the officers concerned regarding the work and conduct of the employees during the period of their probation. In the instant case, we have perused the assessment reports from which it appeared that there are general observations about the unsuitability of the applicant for the post held by him.

16. In the facts and circumstances of the case, we are of the opinion that the discharge of the applicant from the post of Deputy Educational Adviser during the period of his probation by the impugned order dated 1.1.1988, cannot be faulted on any legal or constitutional grounds. In view thereof, the applicant is not entitled to the relief sought in the present application and the same is dismissed.

17. There will be no order as to costs.


(B.N. Dhoundiyal)
Administrative Member


(P.K. Kartha)
Vic e-Chairman(Judl.)