

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRUIT SITTINGS:GWALIOR

Original Application No.202/805/2017

Jabalpur, this Tuesday, the 14th day of July, 2020



HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Ankit Sharma
 S/o Shri Nagendra Sharma
 Aged 26 years,
 Occupation Service
 R/o 74 Sindhi Colony Lashkar
 Gwalior M.P.
 PIN Code 474010
 Mobile No.9406969331
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-Applicant

(By Advocate –**Shri Nirmal Sharma**)

V e r s u s

1. Comptroller and Auditor General
 Through Auditor General
 Audit Bhawan
 Gwalior (M.P.) PIN Code 474001

2. Senior Deputy Accountant
 General/Administration Audit Bhawan
 Gwalior M.P.
 PIN Code 474001

- Respondents

(By Advocate –**Shri M.K. Sharma**)

(Date of reserving the order:06.02.2019)

ORDER

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against the order dated 04.10.2017 (Annexure A/1) passed by the respondents whereby the services of the applicant has been terminated for no reasons and treating him to be temporary employee.



2. The applicant has sought for the following reliefs:-

“8.1 The order impugned Annexure A-1 may kindly be quashed.

Any other order which this Hon'ble Tribunal deems fit in the facts and circumstances of the case may also be kindly be granted.”

3. The facts of the case are that the applicant was appointed under Sports quota in the respondent-department on the post of Auditor on 20.02.2015 and probation was of 2 years. A copy of appointment order dated 20.02.2015 is annexed as Annexure A/2. As per condition in the appointment order, the applicant has to clear departmental examination on completion of one year. The examination was conducted and the applicant successfully cleared the same. The applicant was posted in respective section vide order

dated 01.07.2015. The copy of which is annexed as Annexure A/4. The probation period of applicant was completed in the month of February 2017 and till date no order has been passed as required under appointment order for increasing the period of probation. Suddenly the respondent have passed order Annexure A/1, whereby the termination order has been passed without assigning any reason and treating the applicant to be temporary employee.



4. It is submitted by the applicant that the termination order has been passed without assigning any reasons which is in utter violation of Article 311 of Constitution of India which provides that before termination reasonable opportunity should be provided. Therefore, impugned order Annexure A/1 is manifest, illegal, arbitrary, contrary to law and without application of mind. Further it is submitted that the Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 (hereinafter referred to as “CCS(TS) Rules, 1965”), is not applicable in the case of applicant as the applicant was appointed and was on probation for two years and no order was passed for extension which resulted in deemed confirmation of applicant on the appointed post. As the termination

order has been passed simpliciter and which is result of policy of use and throw. The reasons have not been assigned in the impugned order. So, the impugned order is bad because reasons are backbone and heartbeat of order and the administrative authorities cannot take decision at its own whims and wishes. Further every administrative order shall have its judicial pedigree and which necessitates to follow the principles of natural justice which involves Audi Alteram Partem.



5. The respondents have filed their detailed reply. It has been specifically submitted by the replying respondents that the applicant was issued offer of appointment for the post of Auditor under Sports Quota vide letter dated 20.02.2015 (Annexure R/1). He was appointed as Auditor vide appointment order dated 03.03.2015 (Annexure R/2) temporarily on probation of two years w.e.f. 02.03.2015 (F.N.) on the condition of submission of degree of passing graduate examination within one month. The degree of passing graduate examination (B.Com) has not been submitted by him so far. As per Recruitment Rules, 2000 for Auditors, the essential educational qualification required for direct recruits for the

post of Auditor is a Bachelor Degree of a recognized university. The Recruitment Rules, 2000 for Auditor is annexed as Annexure R/3. In support of essential qualification applicant submitted the marksheet/certificate of B.Com of the Eastern Institute for integrated learning in Management University Jorethang Sikkim.



The marksheet of B.Com, Par-I, II and III are enclosed as Annexure R/4 Colly. On verification of recognition of graduate degree, issued by the said university, UGC New Delhi vide letter dated 30.12.2016 intimated that the said university was established as a private University and was authorized to impart degree courses in main campus in regular mode and no private university was permitted to run study centres beyond the territory of the state. Regarding validity of degree issued by the University, UGC advised to contact Director (Higher Education) Human Resources Development, Government of Sikkim Gangtok Sikkim vide letter dated 30.12.2016 of the UGC is enclosed as Annexure R/5. On referring the verification of marksheet of B. Com of the applicant vide letter dated 03.03.2017 of respondent No.2, Govt. of Sikkim Human Resources Development Department Gangtok vide letter dated

16.03.2017 informed that BA (Geo), BA (General) and B. Com are not the approved courses for any sessions by the UGC/DEC either on regular mode or distance mode. So the marksheet of the applicant was not valid.



6. As per Government of India's instruction-2 below Rule 11 of Central Civil Services (Classification, Control and Appeal) Rules 1965 (hereinafter referred to as '**the Rules 1965**'), a Government servant who was not qualified or eligible in terms of the recruitment rules etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment he should not be retained in service. If he is a probationer or a temporary Government servant, he should be discharged or his service should be terminated. Moreover, such discharge, termination, removal or dismissal from service would be without prejudice to the right of the Government to prosecute such government servants. The copy of Government of India's (GOI) instruction (2) below Rule 11 is enclosed as annexure R/8. The instruction/clarification for the legal status of the B.Com degree of the applicant has been sought through confidential letter of

respondent No.2 vide letter dated 13.04.2017 and 31.05.2017 (Annexure R/9 and R/10 respectively). As per GOI decision, Rule 5 of the CCS (TS) Rules, 1965 'when action is taken under Rule 5 to terminate the services of a temporary employee, the order of termination which should be passed by the appointing authority, should not mention the reasons for such termination. Thus, in view of the said decision which serving the notice of termination, the reasons were not recorded. A copy of GOI decision below Rule 5 CCS (TS) Rules,1965 is enclosed as Annexure R/13. Consequently, the notice of termination dated 04.10.2017 (Annexure A-1) i.e. the impugned order has been issued which is per se legal and valid.



7. It has been further submitted by the replying respondents that the applicant had taken extra ordinary leave without medical certificate for 26 days which is not treated as qualifying service. So his probation should have been completed on 27.03.2017 but during verification of certificates of educational qualification of applicant was intimated by the UGC vide its letter dated 30.12.2016 (Annexure R/5) that the said university was established as a private university and was authorized to impart degree courses in main

campus in regular mode only and no private University was permitted to run study centre beyond the territory of the State. After seeking verification from Director (Higher Education), HRD Department, Government of Sikkim, it was intimated that the marksheets of the applicant were not valid as B.Com was not the approved course for any session by the UGC/DEC either on regular mode or distance mode and ultimately the services of the applicant was terminated under Rule 5(1) of the CCS(TS) Rules, 1965. In compliance of Headquarter instruction, notice of termination of service was issued to the applicant vide order dated 04.10.2017 (Annexure A/1).



8. The applicant has filed rejoinder to the reply filed by the respondents. The applicant had reiterated its earlier stand taken in the O.A. It has been specifically submitted by the applicant that the respondents have failed to consider the letter issued by UGC in which it has been specifically mentioned that the EIILM University was duly authorized to impart education and issue degree under Section 22 of the UGC Act, the marksheet bears the signature of the authority appointed under Section 22 of the Act. It has been further



submitted by the applicant that University was closed on 30.04.2015, prior to that courses were approved and the marksheet of applicant is not by distance education but is of regular mode. In such circumstances, the order impugned is not sustainable. It has been further submitted by the applicant that he was appointed on two years' probation period and that was successfully completed, the respondents have not filed any letter whereby the probation period of applicant was enhanced or extended. So, the applicant was deemed confirmed on post in question. As the applicant has been simpliciter discharge, no reasons have been assigned by the respondents and termination order is stigmatic in nature. There are disputed facts for which enquiry is mandatory so that the applicant may effectively put his defence before the authority but even without issuing show cause notice, the termination order has been passed which deserved to be quashed. There was no complaint against the applicant which ever received in respect of conduct of work of applicant.

9. The respondents have filed additional reply to the rejoinder filed by the applicant wherein it has been submitted that the



applicant had joined the respondent-department on 02.03.2015. During the probation period of two years he has availed extraordinary leave for 26 days without medical certificate which is not treated as qualifying service. So his probation should have been completed on 27.03.2017. Meanwhile the authenticity of educational qualification certificates and degree etc required for the post of Auditor was under the process of verification and finally it was found that the marksheet of B.Com of the applicant is not authentic, due to which completion of the probation period of the applicant had not been considered. As per GOI instruction-(2) below Rule 11 of CCS(CCA) Rules, 1965 (Annexure R/8) a Government servant, who was not qualified or eligible in terms of the Recruitment Rules, etc. for initial recruitment in service or had furnished false information or produced a false certificate in order to secure appointment, he should not be retained in service. If he is a probationer or a temporary Government servant, he should be discharged or his service should be terminated. If he has become permanent Government servant, an enquiry as prescribed in Rule 14 of CCS (CCA) Rules, 1965 may be held and if the charges are proved, the

Government servant should be removed or dismissed from service. In no circumstances should any other penalty be imposed. Such discharge, termination, removal or dismissal from service would however be without prejudice to the right of the Government to prosecute such government servants. The replying respondents have reiterated its earlier stand regarding the authority of the degree issued by EIILM University. It has been clarified by the Government of Sikkim, HRD Department vide its letter dated 16.03.2017 (Annexure R/7) that BA(Geo.), BA(Gen.) and B.Com are not the approved courses for any sessions either on regular mode or distance mode. The applicant has submitted marksheet/certificate of B.Com of EIILM University is not valid. It has been specifically submitted by the respondents that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or better qualifications than the appointee or appointees but who have not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud



on public to appoint a person with inferior qualifications in such circumstances unless it is clearly stated that the qualifications, are relaxable. So the action of the respondent-department is legal and valid.



10. Heard the learned counsel for both the parties and have also gone through the documents attached with the pleadings.

11. From the pleadings itself it is admitted fact by both the parties that the applicant was appointed under Sports quota in the respondent-department on the post of Auditor on 20.02.2015 and was on probation for a period of 2 years.

12. The contention of the applicant is that the termination order has been passed by the respondents without assigning any reasons and treating the applicant to be temporary employee and the same is manifest, illegal, arbitrary, contrary to law. On the other side, the respondents have submitted that the applicant was on probation for 2 years and appointment order was with the condition to submit degree of passing graduate examination within one month. The degree of passing graduate examination (B.Com) has not been submitted by the applicant. As per recruitment rules 2000 (Annexure



R/3) for Auditors, the essential educational qualification required for direct recruits for the post of Auditor is a Bachelor Degree of a recognized University. The applicant had submitted the marksheet/certificate of B.Com of the Eastern Institute for integrated learning in Management University Jorethang Sikkim. On verification of recognition of graduate degree, issued by the said university, UGC New Delhi vide letter dated 30.12.2016 intimated that the said University was established as a private University. So, the validity of degree issued by this University was found to the fact that B.Com is not the approved course for any sessions by the UGC/DEC either on regular mode or distance mode. So the marksheet of B.Com Part I, II and III are not valid. Thus, in view of this, notice of termination and no reasons were recorded. Consequently termination order dated 04.10.2017 (Annexure A/1) was issued.

13. Learned counsel for the applicant has submitted that no reasons and no opportunity of hearing has been given to the applicant before assigning the termination order which is utter violation of Article 311 of Constitution of India.

14. The legal issue before us is that whether during the period of probation and without going through the detailed inquiry and disciplinary proceedings, can termination order be issued on the context that being the probationer the applicant can be terminated simpliciter.



15. The contention of the applicant is that the termination order has been passed simpliciter and is a result of policy of use and throw. So, the termination order being administrative order without reasons violates the principle of natural justice which involves audi alteram partem and the termination order amounts to stigma and punitive in nature and without going through the detailed enquiry under Rule 14 or 16 of the Rules, 1965 is void ab initio.

16. Learned counsel for the applicant has relied upon the order dated 11.12.2018 passed by this Tribunal in O.A. No.202/00483/2015. The relevant portion is as under:-

*“10. The main contention of the applicant is that since her services have been terminated vide Annexure A-4 order, which is punitive in nature and without going through the detailed enquiry under Rule 14 or 16 of the 1965 Rules, therefore, the same is void ab initio. In support of her contention, she has relied upon the judgment passed by the Hon’ble Apex Court in the case of **Pradip Kumar vs. Union of India and Others**, (2012) 13 SCC 182, whereby the*

Hon'ble Apex Court has held that if the order of discharge is stigmatic and punitive in nature, based on enquiry conducted into the allegation and the same is found to be foundation of order of discharge and if no enquiry was held, such order cannot be sustained in law. The relevant paragraphs of the judgment read as under:



14. Nonetheless the order of discharge cannot be upheld, as it is stigmatic and punitive in nature. It is a matter of record that during three years of service no order was issued extending the period of probation of the respondent. He completed the mandatory period of probation on 21-11-2007, therefore, it was expected of the department to take a decision about the performance of the respondent within a reasonable period from the expiry of one year. It is also a matter of record that the respondent continued in service without receiving any formal or informal notice about the defects in his work or any deficiency in his performance. This Court, in Sumati P. Shere v. Union of India⁴, emphasised the importance of timely communication of defects and deficiencies in performance to a probationer, so that he could make the necessary efforts to improve his work. Non-communication of his deficiencies in work would render any movement order of such an employee on the ground of unsuitability, arbitrary. In para 5 of the judgment, it is observed: (SCC pp. 313-14)

“5. We must emphasise that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give and take, on the assessment of work of the employee should be there. The employee should be made aware of the



defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability.”

In our opinion, the aforesaid observations are fully applicable in the facts and circumstances of this case.

*16. In our opinion the controversy herein is squarely covered by a number of earlier judgments of this Court, which have been considered and reaffirmed in **Union of India** v. Mahaveer C. Singhvi. Considering the similar circumstances this Court observed as follows: (SCC p. 228, para 25)*

“25. In the facts of the case the High Court came to the conclusion that a one-sided inquiry had been conducted at different levels. Opinions were expressed and definite conclusions relating to the respondent’s culpability were reached at by key officials who had convinced themselves in that regard. The impugned decision to discharge the respondent from service was not based on mere suspicion alone. However, it was all done behind the back of the respondent and accordingly the alleged misconduct for which the services of the respondent were brought to an end was not merely the motive for the said decision but was clearly the foundation of the same.”

11. *Learned counsel for the applicant has also relied upon the judgment of Hon'ble Apex Court in the matters of V.P. Ahuja vs. State of Punjab and others, (2000) 3 SCC 239 in which the Hon'ble Apex Court has held that when a probational or a person on temporary basis is sought to be removed due to unsatisfactory work, regular enquiry must be held and opportunity must be given to the delinquent probationer and their services cannot be terminated arbitrarily, nor can those services be terminated in punitive manner without complying with the principles of natural justice.*



12. *He has further placed reliance on a judgment of Hon'ble Apex Court in the matters of **Dipti Prakash Banerjee vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and others, (1999) 2 SCC 34**, wherein by referring the case of **Bishan Lal Gupta vs. State of Haryana, (1978) 1 SCC 202**, the Hon'ble Apex Court has observed that an ordinary inquiry by a show cause might be sufficient for the purpose of deciding whether the probationer could be continued. But where the findings regarding misconduct are arrived at without conducting a regular departmental inquiry, then the termination order will be vitiated."*

17. In the instant case, the preliminary enquiry was conducted by the respondent-department and verification regarding B.Com mark sheets Part I, II and III has been done from the University at Sikkim and on that basis the respondent-department has terminated the services of the applicant. As per offer of appointment Annexure A/2 probation period is of 2 years. The performance/conduct if any found unsatisfactory the services is liable to be terminated at any



time. It is clear from the law settled by Hon'ble Apex Court as discussed above, the termination of the services of the employee/probationers, if amounts to stigma and punitive in nature then a regular inquiry ought to have been conducted. From the perusal of impugned order dated 04.10.2017 (Annexure A/1) Rule 5(1) of the CCS (TS) Rules, 1965 has been invoked which is punitive in nature. So, as per the law settled by Hon'ble Apex Court, as discussed above, the detailed inquiry was required to be conducted as per rules, which has not been done in the instant case. Moreover in the instant case, no reasons have been assigned for issuing the impugned order (Annexure A/1). The learned counsel for the applicant also relied upon the law settled by Hon'ble Apex Court in the matter of ***Kranti Association Private Limited and another vs. Masood Ahmed Khan and others***, (2010) 9 SCC 496, the relevant para are as under:-

“Summarizing the above discussion, this Court holds:

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is



impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).



n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

So, no reasons have been assigned the impugned order Annexure A-1, which is bad in law. Moreover, being a civilian employee the CCS(CCA) Rules, 1965 are applicable to the applicant and compliance of such ought to have been done.

18. In view of the above, we are of the view that the impugned order is punitive in nature and has been terminated simpliciter without going through the detailed inquiry as per CCS (CCA) Rules, 1965. Resultantly, Annexure A/1 order dated 04.10.2017 is quashed and set aside. However, the respondents are at liberty to take appropriate action, if any, as per rules.



19. Accordingly, this Original Application is allowed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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