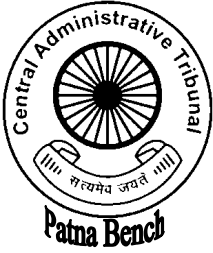


CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00836/2018

Reserved on: 25.01.2021
Pronounced on: 19.02.2021

C O R A M

HON'BLE MR. M.C. VERMA, JUDICIAL MEMBER
HON'BLE MR. SUNIL KUMAR SINHA, ADMINISTRATIVE MEMBER



Sonu Kumar, Son of Late Nepali Prasad, Resident of Village- Sugaon, Post- Sugaon, Police Station- Makhdumpur, District- Jehanabad, Bihar.

.... Applicant.

By Advocate: - Mr. J.K. Karn

-Versus-

1. Union of India through the Lieutenant General, Officers Training Academy, Gaya, Bihar- 823005.
2. The Commandant, Officers Training Academy, Gaya, Bihar- 823005.
3. The Col., Administration Col., Officers Training Academy, Gaya, Bihar- 823005.
4. The Civil Establishment Officer, Officers Training Academy, Gaya, Bihar- 823005.
5. The Commandant, Batra Battalion, Officers Training Academy, Gaya, Bihar- 823005.
6. The Commandant, Khetarpal Battalion, Officers Training Academy, Gaya, Bihar- 823005.

.... Respondents.

By Advocate(s): - Mr. H.P. Singh, Sr. SC

ORDER

Per S.K. Sinha, A.M:- The applicant, a former Defence Civilian Employee designated as Cadet Orderly appointed on probation at Officers Training Academy, Gaya in January, 2014 has preferred this OA aggrieved with the Respondents' decision to terminate his services vide order dated 23.06.2017. The advertisement for the post of Cadet Orderly was published in February, 2012. On appointment,

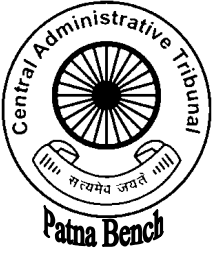


the applicant was put on two years' probation in accordance with the terms of the appointment letter. After three years of service, his service was terminated vide order dated 23.06.2017 (Annexure A/1) on ground of unsatisfactory conduct/performance of duties. The applicant submitted a representation before the respondents against the termination order which was rejected vide letter dated 18.07.2017 (Annexure A/2). Aggrieved with the termination of his service, the applicant had preferred a writ petition CWJC No. 13738 of 2017 before Hon'ble Patna High Court. However, the said Writ Petition was dismissed as withdrawn on 20.08.2018 granting liberty to the applicant to approach the Tribunal for redressal of his grievances. Accordingly, the applicant preferred the instant OA.

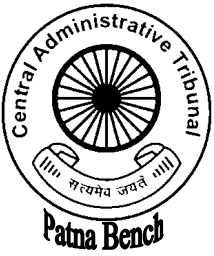
2. Respondents contested the OA on the grounds of maintainability and filed written statement. Subsequently, the applicant has also filed a rejoinder.

3. The applicant, in his pleadings, has stated that he had performed duty to the satisfaction of the authorities and he was paid salary regularly during the probation period. After two years his service was confirmed and a service certificate was also issued on 07.03.2017 showing him as permanent Civil Employee at Officers Training Academy (Annexure A/5). He was not issued any warning during the probation period nor any adverse remark was made in his records. Suddenly, after three years of service, the Lieutenant General, Officers Training Academy, Gaya issued the order

terminating his services from one month after the date of order. According to the appointment offer letter (Annexure A/4), he was put on probation for two years extendable by further one year. However, his probation was not extended beyond two years. As there was no extension of probation, he had become a permanent employee and his services can not be terminated without holding a departmental proceeding. Hence, his termination of service was illegal. He filed a Writ Petition before Hon'ble Patna High Court where he was told there that CAT is the right forum to seek redressal of his grievances, so he sought withdrawal of the Writ Petition and approached the Tribunal. The applicant has put reliance on the Hon'ble Supreme Court judgement in the case **V.P. Ahuja Vs. State of Punjab & Others** decided on 06.03.2000.



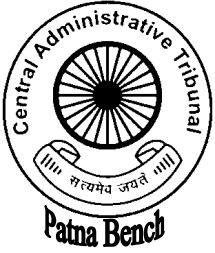
4. The respondents have pleaded in the written statement that the applicant was appointed against the reserve OBC vacancy and was placed after appointment on probation for a period of two years. He was declared unfit for retention/confirmation in the assessment report for the year 2014-15 (Annexure R/1). Subsequently, he was found 'fit' for retention in the assessment report for the year 2015-16 (Annexure R/2). A Confirmation Board meeting was held on 13.05.2016 (Annexure R/3) in which it was decided to extend the probation period of the applicant by one year w.e.f. 25.02.2016 in accordance with the MHA OM No. 44/1/59-Ests. (A) dated 15 April 1959. Despite 'unfit' for retention report in the first year, the applicant was given additional chance to prove himself by extending



his probation by one year. The candidate however was assessed as 'unfit' for retention again for the year 2016-17 (Annexure R/5). He was given chance to work under different officers to ensure fair and impartial reporting (Annexure R/4). Despite ample opportunity to improve his functioning and conduct no improvement was shown by the applicant. Several warning letters were also issued to him between 30.06.2014 to 30.03.2016 (Annexure R/6 Series). As the applicant's probation was extended his services were not regularized. The order for termination of service was finally issued in accordance with the CCS(TS) Rules and also the MHA OM dated 26.08.1967 (Annexure R/7). The MHA OM clearly states that the services of an officer on probation can be terminated in terms of the conditions stipulated in the appointment offer letter. The appointment offer letter at para 3 (b) mentions that his services can be terminated by giving a notice of 30 days during the probation period. Hence, the termination of service does not suffer from any legal lacuna or denial of principle of natural justice. The applicant has made an incorrect statement before the Tribunal that his service was confirmed. The service certificate issued by the OTA which mentions that the applicant was a permanent civilian staff of the Academy, was issued erroneously. The applicant was a temporary staff and was never confirmed. His services were terminated during the period of probation and no such show cause notice was necessary before issuing the order.

5. After admission, we heard the learned counsels for rival parties.

6. The counsel for applicant Shri J.K. Karn has put reliance on the ratio of the Hon'ble Supreme Court judgement in V.P. Ahuja Vs. State of Punjab & Ors. decided in March,2000. The service of V.P. Ahuja in the referred case was terminated during the period of probation for failing in performance of administrative and technical duties. The Hon'ble Supreme Court had held at para-6 that a probationer like a temporary servant was entitled to certain protection and his services cannot be terminated arbitrarily in a punitive manner without complying with the principles of natural justice. The Hon'ble Supreme Court had quashed the order terminating services of V.P. Ahuja and allowed the appeal.

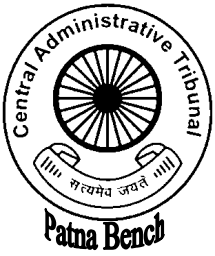


6.1. The learned counsel Shri J.K. Karn submitted that the applicant on appointment was put on probation and that his supervisory Officer had observed that he had shown considerable improvement in functioning. Despite a good report, The Board of officers decided to extend his probation by one year. The respondents had acted in a biased manner and issued him several warning letters. The services of the applicant were terminated without giving any show cause and his representation was rejected summarily. The decision of the respondents was against the principles of natural justice and he should have been given opportunity to explain his stand. Shri J.K.

Karn has requested to quash the impugned order and restore his service as Cadet Orderly.



7. The learned counsel for the respondents Shri H.P. Singh averred that it was clearly mentioned in the appointment offer letter of the applicant that the appointment was purely temporary and subject to the provisions of the CCS(TS) Rules. The appointment letter also mentioned that the applicant will be on probation for a period of two years which may be extended for a further period of one year and during probation period he may be discharged from service without assigning any reason by giving a notice of thirty days or pay and allowances in lieu thereof. The applicant was attached with different officers in order to ensure a fair assessment of his capabilities and performance. His assessment for the period 23.02.2014 to 31.03.2015 was unfavorable. He was described as an 'average performing individual who requires continuous monitoring'. Also, 'he has a casual and lackadaisical attitude and he has a tendency to disobey orders'. The Reporting Officer had not recommended for his confirmation and recommended for extension of probation. The applicant's integrity was also recorded as doubtful. The Reviewing Officer held that the applicant was unfit for retention. Learned counsel Shri H.P. Singh further mentioned that there was some improvement in the assessment report for the period 1st April, 2015 to 31st March, 2016 which described the applicant as



hardworking officer with a sincere attitude and the Reviewing Officer also observed that the applicant was fit for retention. The Board of Officers, which conducted the screening of employees who had completed the probation period upto 30th April, 2016 decided to extend the applicant's temporary service by further one year. Further assessment report of the applicant for 1st April, 2016 to 31st March, 2017 mentions that the applicant tended to be argumentative with the JCOs/NCOs and needed to improve his conduct and show more interest in the work. The Reviewing Officer also indicated that he was unfit for retention. The applicant was shown the adverse remarks of the Reporting and Reviewing officers. The learned counsel for the respondents further mentioned that between May, 2014 and 30th March, 2016 he was given seven warning letters to improve his conduct and functioning. The learned counsel for the respondents submitted that In view of the indiscipline conduct and hostile attitude the service of the Cadet Orderly Sonu Kumar was terminated during the probation period in accordance with the Rule-5 of the CCS (TS) Rules, 1965. Learned counsel also submitted that the applicant had shown indiscipline attitude and non commitment to his work. Ld. Counsel urged that the applicant was appointed as Cadet Orderly for Defence Forces where discipline, obedience and commitment are crucial attributes required of any staff. Defence Forces cannot afford to keep an indisciplined officer within their Unit. Though the applicant was a Civil employee, he could vitiate the working

environment of the Unit where he would be posted. The termination of the service of applicant was completely legal and in accordance with the rules. Hence, the OA needs to be dismissed.



8. We have considered the submissions of the rival counsels and examined the materials on record. We find that the only issue to be examined in this case is whether the method for termination adopted by the respondents was in accordance with the settled rules and principle of natural justice. The applicant was issued warning letters time-to-time advising him to mend ways and improve his conduct periodically by the concerned supervisory officers. He was also shown the adverse entry in his ACRs. The applicant's probation period was extended by one year in view of his unsatisfactory conduct and functioning. The appointment offer letter (Annexure A/4) clearly mentioned at Para-3 that his appointment was purely temporary and subject to the provisions of CCS (TS) Rules. Rule 5 of the CCS (TS) Rules at para-1 (a) (b) is reproduced as under:-

“ 5. (1) (a) The service of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government servant;

(b) the period of such notice shall be one month:

Provided that the service of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his

services or, as the case may be, for the period by which such notice falls short of one month.”

The extension in probation of the applicant was ordered in accordance with the terms and conditions stipulated in the appointment letter at para-3. Para-3 (a) and (b) of the appointment is reproduced here as under:



“3. Your appointment is purely temporary and provisional subject to the provisions in accordance with the CCS(Temporary) Service Rules framed there under and amended from time to time and also such orders and directions as have been or may be issued by the Government of India from time to time. Your provisional appointment will be with effect from the date of your reporting to Officers Training Academy, Gaya based on this Offer letter and subject to followings:-

- (a) You will be governed by normal rules for temporary civilians.
- (b) You will be on probation for a period of two years from the date of your appointment which may be extended for a further period not exceeding one year. During the period of probation, you will be liable to be discharged from service without assigning any reason by giving a notice of 30 days or pay and allowances in lieu thereof. On satisfactory completion of the period of probation, you will be considered for confirmation in that post.”

9. Keeping the adverse annual assessment reports, periodic warnings and the extension in probation period, we find that the termination of the applicant’s service was in accordance with the terms of letter of appointment. Also as the applicant was periodically given warning letters and shown the adverse entry in the assessment reports we find that the applicant was given adequate opportunity to improve his conduct and present his counter views. The ratio of

Hon'ble Supreme Court judgement in V.P. Ahuja case is not applicable here as the applicant was given opportunity periodically to improve his conduct and put up counter views. As his probation had been extended and his service was not confirmed there was no need to hold a departmental inquiry. The service certificate dated 07.03.2017 which was issued by the OTA to facilitate him in getting a bank loan had by mistake mentioned him as a permanent official. The respondents have conceded this mistake in the written statement (Para 15 of WS). The applicant cannot take advantage of this mistake. As required under the terms of appointment offer letter, the applicant was also given one month notice before termination of his services.



10. Taking the entirety of facts into consideration, we hold that the termination of the services of the applicant was in accordance with the terms and conditions of the appointment offer letter. The termination of service was also issued after giving adequate opportunity to applicant to improve his conduct hence there was no violation of principle of natural justice. We find nothing illegal or repugnant about the order terminating the services of the applicant. The OA is thus dismissed being devoid of merit. No order as to costs.

[Sunil Kumar Sinha]
Administrative Member

[M.C. Verma]
Judicial Member

Srk.