IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(10)

O.A. No. 329/86. 198
T.A. No.

DATE OF DECISION 17.7.1987

Shri Yashwant Singh Tomar Petitioner

Shri R.L. Sethi, Advocate. Advocate for the Petitioner(s)

Versus

Union of India & Anr. Respondent

Shri N.S. Mehta, Sr. Standing counsel. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. JUSTICE J.D. JAIN, VICE-CHAIRMAN

The Hon'ble Mr. Birbal Nath, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? No.
2. To be referred to the Reporter or not ? No.
3. Whether their Lordships wish to see the fair copy of the Judgement ? No.
4. Whether to be circulated to all the Benches ? ~~No~~.

17/7/87

(BIRBAL NATH)
Member (A)

J D Jain

(J.D. JAIN)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

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DATE OF DECISION: 17-7-1987.

REGN. NO. O.A. 329/86.

Shri Yashwant Singh Tomar ... Applicant

Vs.

Union of India & Anr. ... Respondents.

CORAM:

Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

Hon'ble Mr. Birbal Nath, Administrative Member,

For the applicant: Shri R.L. Sethi, Advocate.

For the respondents: Shri N.S. Mehta, Sr. Standing Counsel.

JUDGMENT
(delivered by Mr. Birbal Nath).

The applicant, Shri Yashwant Singh Tomar, was appointed as Junior Engineer (Civil) in C.C.W., All India Radio, Sub-Division, Kota, vide order dated 6th May, 1985 (Annexure II). The said order reads as under:-

> "Reference Superintending Engineer (C), CCW, AIR, (Delhi Circle), Memo. No. SE(C)1(2)/83-S/4542-44 dated 18.1.1985 Shri Yashwant Singh is appointed as Junior Engineer (Civil) in CCW, AIR, Sub Division-Kota under Jaipur Division in an officiating capacity w.e.f. 19.2.1985 (F.N.) in the pay scale of Rs. 425-15-500-EB-15-560-20-700 plus allowances as admissible under the rules until further orders subject to verification of his character and antecedents.
>
> Shri Yashwant Singh would be on probation for two years w.e.f. 19.2.85 (F.N.)"

The applicant's services were, however, terminated on 29th January,

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1986 under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (fort short called 'the Rules') (Annexure I). Per his application filed before the Tribunal in May, 1986 under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the impugned termination order on the ground that he had been recruited to the post from open competition after his sponsorship by the Employment Exchange and his appointment was regular with a probation for two years and that Rule 5 of the Rules is not applicable for termination of service in the case of persons on probation vide Government of India, Ministry of Home Affairs, Office Memorandum No. 4/10/66-Estt.(C) dated 26th August, 1967 and the termination of his services was in violation of Article 311 (2) of the Constitution. The learned counsel for the applicant further argued at the bar that though the termination order had the semblance of being innocuous but, in reality, this order of termination simplicitor was punitive and had cast stigma upon the applicant without affording him an opportunity of hearing.

2. It is the case of the respondents that the applicant was appointed as Junior Engineer (Civil) in an officiating capacity on probation for two years with effect from 19th February, 1985. They maintained that the termination of the services of the applicant during the probation period under Rule 5 of the Rules was in order. It was argued on behalf of the respondents that the applicant being on probation, his fitness for continued employment had to be judged and having been found unsuitable, the termination of his services within the probation period, ~~which~~ could be done either in terms of service-contract or under Rule 5 of the Rules, which was actually done under this Rule in this case, was legal and valid.

3. The first contention pressed on behalf of the applicant is that being a probationer, he was having the attributes of a substantive status as envisaged in Audit Instructions under F.R.9(6). The relevant paragraph (c) of the said Audit Instructions reads as under:

> "(c) The status of a probationer is to be considered as having the attributes of a substantive status except where the rules prescribed otherwise."

The Audit Instructions, relied upon by the learned counsel for the applicant, do not confer upon a probationer any permanency in status or a right to hold the post in that capacity. It was further argued that the services of the applicant could not be terminated under Rule 5 of the Rules as he was a probationer and this action of the respondents was violative of the Government of India, Ministry of Home Affairs O.M. No. 4/10/66-Estt.(C) dated 26th August, 1967. The instructions of the Government of India, referred to by the applicant, do lay down that it would be desirable to take action under the terms of the letter of appointment, but at the same time, they do not exclude action under Rule 5(1) of the Rules. The aforesaid O.M. issued by the Government of India, Ministry of Home Affairs, reads as under:-

> "Non-applicability of Rule 5 for termination of service in the case of probationers/persons on probation.- A question has arisen whether this rule should be invoked also in the case of persons appointed on probation, where in the appointment letter a specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any) has been provided. The position is that the C.C.S.(T.S.) Rules do not specifically exclude probationers or persons on probation as such. However, in view of the specific condition regarding termination of service without any notice during or at the end of the period of probation (including extended period, if any) it has been decided, in consultation with the Ministry of Law, that in cases

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where such a provision has been specifically made in the letter of appointment, it would be desirable to terminate the services of the probationer/person on probation in terms of the letter of appointment and not under Rule 5 (1) of the C.C.S. (T.S.) Rules, 1965."

A plain reading of the above instructions shows that the action under the C.C.S. (T.S.) Rules in respect of a probationer is not excluded. It only mentions that it would be desirable to terminate the services of a probationer in terms of letter of appointment and not under the C.C.S. (T.S.)Rules. As such, we find that the impugned order of termination is not in violation of these instructions. These instructions do not confer any right on the applicant.

The next argument of the learned counsel for the applicant was that though the order of termination of the applicant's services has innocuous appearance of being termination simplicitor, it was punitive so as to punish the applicant for his trade union activities. It was, however, argued by the learned counsel for the respondents that they had made an overall assessment of the conduct of the applicant and had come to the conclusion that he will not prove a suitable officer and it was, therefore, decided to terminate the services of the applicant in the manner in which they had done. No material has been placed before us to show that the order of termination was punitive. Though it is well settled now that the courts can go into the motives behind an order of termination simplicitor, yet such order of termination of services can be quashed only on proved malafides or actionable allegations of arbitrariness or misconduct. No material has been placed before us to show that the respondents had acted in a punitive manner and we do not find that the provisions of Article 311 have been violated in this case. The learned counsel for the respondents

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in this connection relied on the judgment of the Hon'ble Supreme Court in the case of Commodore Commanding, Southern Naval Area v. V.N. Rajan[1], wherein it has been held as follows:-

> "Where the decision to terminate the services of the servant had been taken at the highest level on the ground of unsuitability of the servant in relation to the post held by him and it was not by way of any punishment and no stigma was attached to him by reason of the termination of his services, termination could not be said to be vitiated for non-observance of Art. 311 (2). 1970 Ker LJ 164, reversed."

The learned counsel for the respondents also relied, in this connection, on the judgment of the Hon'ble Supreme Court in the case of Union of India & others v. P.S. Bhatt[2], wherein it has been held as follows:-

> "Appointment to higher post on probation - Reversion to original post - No stigma cast - Order not by way of punishment even if abusive language used by employee against superiors was motive or inducing factor for passing the order. Decision of Andh. Pra. High Court reversed."

It is to be noted that there is a catena of decisions with regard to termination of services of probationers. In Comdr. Comdg., Southern Naval Area v. V.N. Rajan[1] (supra), it was observed by the Hon'ble Supreme Court that "as the respondent was a temporary employee on probation, it was open to the employer to terminate his services at any time before he was confirmed, if the employer was satisfied that he was not suitable for being retained in service." In Parshottam Lal Dhingra v. Union of India[3], the Hon'ble Supreme Court has held as under:

> "But if the servant has no right to the post, as where he is appointed to a post, permanent or temporary either on probation or on an officiating basis and whose temporary service has not ripened into a quasi-permanent service as defined in the Temporary Service Rules, the

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1. AIR 1981 S.C. 965
2. AIR 1981 SC 957.
3. 1958 S.CR. 828.

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termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment... To put it in another way, if the government has, by contract express or implied, or, under the rules, the right to terminate the employment at any time, then such termination in the manner provided by contract or the rules is, prima facie and per se, not a punishment and does not attract the provisions of Art. 311".

It is clear that the termination of services may be founded within the terms of the contract itself. The termination cannot be held to be a punishment nor affected by a stigma and does not attract Article 311 unless there are facts to show that the order was plainly by way of punishment. Since no such material has been placed before us, we hold that the impugned order of termination is not tainted with malafides or punitive motives. However, we have, in order to satisfy our judicial conscience, perused the relevant official file and we find that the allegations against the applicant are of a general nature which have a direct bearing on his fitness/suitability for retention on the post rather than of specific nature which can be said to be the foundation or basis for termination of his service.

4. In view of the foregoing discussion, the application is found to be without merit and is dismissed with no order as to costs.

17/7/87

(BIRBAL NATH)
Member (A)
17.7.1987.

J. Jain

(J.D. JAIN)
Vice-Chairman
17.7.1987