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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O. A. NO. 1003/86

DECIDED ON : 29.7.1992

Harish Chandra Sunarya ... Applicant

-Versus-

Union of India & Ors. ... Respondents

CORAM : THE HON'BLE MR. T. S. OBEROI, MEMBER (J)  
THE HON'BLE MR. P. C. JAIN, MEMBER (A)

None for the Applicant

Shri K. N. R. Pillai, Counsel for Respondents

JUDGMENT (ORAL)

Hon'ble Mr. P. C. Jain, Member (A) :-

The applicant was appointed as Clerk Grade-I on probation for a period of one year under the Central Railway in pursuance of a competitive examination conducted by the Railway Service Commission, vide offer of appointment dated 1.1.1983. He reported for duty on 21.1.1983. He remained unauthorisedly absent from 3.4.1983. He was asked to report for duty vide letter dated 22.7.1985 along with his medical certificate. He went to join duty in pursuance of the above letter but was not allowed to join duty as he had reported only with a certificate of fitness without furnishing any certificate of his sickness as claimed by him during the period of absence. It was in this background that the impugned order dated 9.10.1985 was issued by which on the grounds of unauthorised absence from 3.4.1983 and during the period of probation his services were terminated and the applicant was given 14 days' wages in lieu of notice of 14 days in accordance with the terms and conditions of his appointment. In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the aforesaid impugned order and

has prayed for quashing the same and for treating him to be in continuous service of respondent No.1 with all the benefits of the post of Clerk Grade-I including arrears of salary and allowances.

2. The respondents have contested the O.A. by filing a reply to which no rejoinder has been filed. None is present for the applicant, but as the case is nearly six years old, we consider it appropriate to dispose of the same on merits. We have accordingly carefully perused the material on record and also heard the learned counsel for the respondents.

3. The main ground taken by the applicant in the O.A. is that his termination of service amounts to removal and provisions of Article 311 of the Constitution are attracted. It is sought to be contended that as no inquiry was held or no opportunity was given to the applicant to show cause, the impugned order of termination of service is violative of Article 311 of the Constitution. The case of the respondents, on the other hand, is that the applicant was on probation and after working for nearly two and a half months he absented himself and he failed to substantiate that he was sick during the period of his absence, his services were terminated by giving him 14 days' pay in lieu of 14 days' notice in accordance with the terms and conditions of his appointment. It needs to be stated here that inspite of the fact that the applicant claims that he remained under the treatment of one Dr. Vishambher Dayal of Shanti Nagar, Lashkar, Gwalior (MP) from 11.4.1983 to 29.4.1985, he has not placed any certificate of any sort from the aforesaid doctor on record to substantiate

his contention. In fact apart from his averment there is nothing on record to show that he remained absent because he was ill and <sup>was</sup> getting treatment either from an authorised Railway doctor or from any private doctor. In view of this, it has to be held that the applicant remained absent from duty during his period of probation without any valid reason and without any authorisation from competent authority for such absence. As regards the plea that the termination of services amounts to removal, it may be stated that the provisions of Article 311 of the Constitution are attracted in the case of a public servant who is appointed to a civil post <sup>if</sup> or ~~or~~ he has a right to hold such a post, whether in a substantive or in an officiating capacity. A person appointed on probation has no right to hold such a post unless after the expiry of the period of probation he is regularly appointed to that post. Learned counsel for the respondents cited the judgment of a Constitution Bench of the Supreme Court in the case of Ranendra Chandra Banerjee vs. Union of India & Anr. : AIR 1963 SC 1552. It was held in that case that a Government servant who is on probation can be discharged during the period of probation and such discharge would not amount to dismissal or removal within the meaning of Article 311 (2) of the Constitution and would not attract the protection of that Article, where the services of a probationer are terminated in accordance with the rules and not by way of punishment. It was further held that a probationer has no right to a post held by him and under the terms of his appointment he is liable to be discharged at any time during the period of probation subject to the rules governing such cases. The respondents have filed with their reply as Annexure-A a copy of the terms and conditions on which the applicant was appointed on probation.

Para 1.3 of the aforesaid offer of appointment stipulates that during the period of probation his services were liable to be terminated by 14 days' notice on either side. Para 1.1 of the communication ibid stipulates that he will initially be appointed on probation for a period of one year and during the period of probation he will be under training for a period of six months which will be inclusive of three months' theoretical training and three months' practical training. If a person is not available for training during the period of probation without any valid reason, the onus of establishing rests on him that his absence during that period was on valid grounds and with the permission of the competent authority. In our view, it is a simple case of the applicant not attending to his training during his period of probation. On the facts and in the circumstances of this case, it cannot be held that the impugned order has been passed as a measure of punishment.

4. In the light of the foregoing discussion, we see no merit in this O.A. which is accordingly dismissed leaving the parties to bear their own costs.

( P. C. Jain )  
Member (A)

( T. S. Oberoi )  
Member (J)