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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2625/90

NEW DELHI THIS THE 23rd DAY OF JANUARY, 1996.

HON'BLE SHRI N.V. KRISHNAN, ACTING CHAIRMAN
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

Sri Chandra Bose
S/o Sri Brahm Prakash
Village & P.O. Khirwa Jalalpur
Tehsil Sardhana
District Meerut

Applicant

(By Advocate Shri Jog Singh,

vs.

1. Union of India, through
the Secretary,
Ministry of Home Affairs,
Govt. of India,
New Delhi.

2. Assistant Director
Intelligence Bureau
Ministry of Home Affairs
Govt. of India
New Delhi.

3. Sri. Udayan Mukerji
Central Intelligence Bureau
Subsidiary Intelligence Officer
Ahmedabad (now posted in Delhi)

Respondents

(By Advocate Shri N.S. Mehta)

ORDER

MR. N. V. KRISHNAN:

The applicant is aggrieved by the order dated 8.8.1989 imposing upon him a penalty of censure and by the order dated 9.4.1990 terminating his service. He joined the Intelligence Bureau on 7.1.1985 and on completion of his training, he was posted to the Subsidiary Intelligence Bureau (SIB) with effect from 12.9.1985. While so, the applicant was served with a Memorandum dated 9.9.1988 (Annexure I) informing him of the decision to initiate action under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and imposing a minor penalty upon him. A statement of imputations was enclosed therewith which is reproduced below:

" That Shri Chandra Bose, ACIO-II(G), Jamnagar had submitted an application to DCIO Jamnagar for sanction of 7 days casual leave from 14.7.88 to 23.7.88 midfixing and suffixing the holidays covering the period upto 25.7.88. Shri Chandra Bose did not obtain oral permission from the DCIO Jamnagar before proceeding on casual leave. It was found that Shri Chandra Bose

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who was to return to duty on 26.7.88 had advanced dubious ground for proceeding on casual leave with the intention to extend the leave under one pretext or other as he already had handed over letter of authority in favour of Shri Abhay Singh, JIO-I(G), Jamnagar to draw his pay for the month of July, 1988. He resumed duty on 8.8.88 and submitted medical certificates and requested to treat his absence from 26.7.88 to 5.8.88 as 11 days medical leave. Shri Chandra Bose has thereby indulged in indisciplined manner and misbehaviour in violation of rule 3(1)(ii) and 3(1)(iii) of Central Civil Services(Conduct) Rules, 1964."

The applicant submitted his reply on 13.9.1988 which was considered and the penalty of censure was imposed upon him vide Annexure-IV order dated 26.10.1988. The applicant submitted an appeal against this order(Annexure-V) which was disposed of by the order dated 9.4.1989. In so far as the censure is concerned, it was maintained. However, the absence of the applicant from 14.7.88 to 7.8.88 was treated by the appellate authority, as extraordinary leave without pay and allowances instead of "dies non".

2. Subsequently by an order dated 8.8.1989, the services of the applicant were terminated under Rule 5 of the Central Civil Services(Temporary Service) Rules, 1965.

3. The applicant has impugned these orders and sought a direction for his reinstatement.

4. The respondents have filed a reply contesting these claims. Apart from contending that the OA is barred by limitation, it is stated that both in regard to the imposition of penalty of censure and subsequent termination of service, the orders have been validly passed.

5. We have heard the learned counsel for the parties. The only ground on which the penalty of censure is challenged is that ^{the applicant} ~~he~~ had adequate reasons for being absent and that he had no intention of extending the leave which became a necessity later on.

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6. We are of the view that it is not for us to consider the merits of the ground or reappraise the decision taken on merits. We notice that in respect of the imposition of minor penalty, due opportunity was given to the applicant. The explanation given by him was duly considered and the penalty was imposed. Likewise, the appellate authority had also considered his appeal memorandum and hence, we are of the view that in so far as the imposition of penalty is concerned, the applicant does not have a case.

7. In so far as the termination is concerned, the learned counsel for the applicant submits that this is a colourable exercise of power and it is, in fact, a disguised punishment. When the appellate authority dismissed the appeal regarding censure, the applicant had sent a letter dated 24.5.1989 seeking permission to represent his case in the Tribunal. He was given a reply on 4.8.1989 (Annexure-VII) that no such permission is necessary under the instructions of Government. Immediately thereafter on 8.8.1989, the services of the applicant had been terminated by the impugned Annexure-VIII order. He, therefore, suggests that this is a case of punishment which was imposed upon the applicant as he has threatened to approach the Tribunal against the decision of the appellate authority rejecting his appeal against the censure. The learned counsel relies upon the judgement of the Supreme Court in *Anoop Jaiswal vs. Govt. of India & anr.* (1984 (2) SCR 453).

8. This allegation is denied by the respondents and it is stated that it is after perusal of the applicant's entire record, a decision was taken to terminate his services. The learned counsel for the respondents relies upon the judgement of the Supreme Court in *State of U.P. Vs. K.K.*

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Shukla (1991) 1 SCC 691.

9. On our direction, the respondents have produced the records of the case also. We notice from File No. III-6(2)/89 dealing with the complaint against the applicant, Chandra Bose and two other officers, Shri R.C. Joshi and Shri C.K.A. Nambi that a report was made against the applicant by the Deputy CIO, Jam Nagar regarding the involvement of the applicant in a case of bribery. It was reported by the Deputy CIO that the applicant and Shri R. C. Joshi demanded Rs.2000/- each from one of the firms against whom some enquiries were being conducted by the Intelligence Bureau. It was stated that R.C.Joshi confessed that he had received the amount stating it to be a Diwali gift. The applicant denied receipt of such money. But after Shri R. C. Joshi admitted his guilt, the applicant also accepted to have received the payment. The Deputy CIO, Jam Nagar ensured that the amounts collected by these two persons were returned to the concerned party.

10. It is on the receipt of that report that the CIO (respondent No.3) informed the Headquarters on 30.5.1989 at Delhi about this incident in which he also referred to the earlier record of the applicant. He suggested that the Intelligence Bureau should consider terminating the services of the applicant and Shri R.C.Joshi as a formal D.E. would expose the working of the I.B. It was also stated that separate disciplinary proceedings were in progress against Shri C.K.A.Nambi. Apparently, the reference was made to Shri M.R.Reddy, Deputy Director in the Intelligence Bureau on personal basis. The latter officer while agreeing

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that the services of the applicant and Shri R.C.Joshi should be terminated under the Temporary Service Rules also added that as the third respondent was the competent authority, it was for him to take his own decision. This was also sent as a personal communication.

11. It is on that basis that the impugned order was passed. Normally, this order would have come within the mischief of being an order of punishment in the garb of an innocuous order under the Central Civil Services (Temporary Service) Rules. However, we find that the competent authority had considered the entire record of the applicant. The report of the Deputy CIO, Jam Nagar only, provides an occasion to review the case of the applicant and as mentioned by the learned counsel for the respondents, this case would be covered by the ratio of the Supreme Court judgement in the State of U.P. Vs. K.K.Shukla (supra). The Court has held that whenever the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against a temporary Government servant. The applicant was a probationer. The services of a probationer are liable to be discharged on similar grounds. Therefore, as the applicant has not yet been confirmed, the competent authority could take recourse to the Central Civil Services (Temporary

Service) Rules for terminating his services in the above circumstances. We are also satisfied that the impugned order of termination was not passed to penalize the applicant for wanting to approach the Tribunal in the case regarding imposing of the penalty of censure, as contended in para 7 above. The applicant attracted adverse notice due to his conduct. The order of termination is not one of punishment, and accordingly, the application, in so far as it challenges this order, is liable to be dismissed.

12. For the aforesaid reasons, we do not find any merit in the O.A. It is dismissed. No costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

N. V. Krishnan
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(N. V. Krishnan)
Acting Chairman

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