

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1984 of 1991
T.A. No.

DATE OF DECISION 23.12.92

Ms. Chandra Kumari	Petitioner <u>2/5</u>
Shri G.D. Gupta	Advocate for the Petitioner(s)
Versus	
Union of India	Respondent
Shri R.S. Aggarwal	Advocate for the Respondent(s)

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The Hon'ble Mr. Justice Ramn Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. D.K. Chakravorty, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? x
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? x
4. Whether it needs to be circulated to other Benches of the Tribunal? x

(Judgement of the Bench delivered by Hon'ble Shri
Justice Ram Pal Singh, Vice-Chairman (J).)

J U D G M E N T

The services of the applicant were terminated by termination order ^(Annex. A-1) dated 13.8.90 purported to have been passed under clause (iii) of the terms of the offer of appointment dated 27.11.1987 on the ground that her work and conduct during the period of probation have not been upto the mark and that she was not likely to be an efficient officer and it is this order which is being challenged by the applicant in this O.A. filed under Section 19 of the Administrative Tribunals Act of 1985. Against this order, the applicant submitted a representation but the same was rejected vide Memo dated 12.11.90 (Annex. A-2).

2. The applicant's case in brief is that the impugned order terminating her services, though innocuously worded, is indeed a camouflage for imposing the penalty of dismissal from service

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The contention of the applicant, therefore, is that the order of termination of her services is punitive in character and amounts to imposing upon the applicant the penalty of dismissal/removal from service within Article 311 (2) of the Constitution and since the removal order was not passed in accordance with law, it be quashed.

3. The applicant was a Scheduled Caste candidate and came out successful in the Civil Services Examination of 1986 held by the Union Public Service Commission and was selected for appointment as Income Tax Officer Group 'A' (Junior Scale) and this post was later redesignated as Assistant Commissioner of Income Tax (Junior Scale) and she was appointed by order dated 27.11.87 (Annex. A-3). This appointment was to be on probation for a period of two years and it was stated therein that during the said period of probation, the applicant shall remain under training at the National Academy of Direct Taxes, Nagpur, for a period of two years. She was also to undergo training at Lal Bahadur Shastri National Academy of Administration, Mussoorie, after completion of her training at Nagpur. After taking the "end-of-the course" test and at the end of the training at Nagpur, she will have to undergo on-the-job training in the field. As she joined training with the batch of 1987, the period of her training was 1-1/2 years and that is how she remained under training at Nagpur upto 30.6.90. However, she could not clear the second departmental examination held in January, 1990. She appeared again in the 2nd departmental examination held in June, 1990, but she is unaware of her result. Meanwhile, by order dated 13.8.90 her services stood terminated. The applicant then was posted as Asstt. Commissioner of Income Tax to the Chief Commissioner of Income Tax, Delhi, vide orders dated 22.6.90 (Annex. A-7). According to her, no reasons for terminating her services were given, but she suspects that the reason behind this termination order was an incident which occurred while she was in training at the National Academy of Direct Taxes, Nagpur. One Smt. Kavita Bhatnagar was her bath-mate who was also her close friend. Some jewellery/saris of Kavita Bhatnagar are said to have ^{been} stolen from

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her room. The applicant was harassed and tortured and was threatened either to pay the amount of the stolen property or she would be involved in a criminal case. She contends in the O.A. that though she was not responsible for this theft, yet in order to save her career she paid the amount of Rs. 16,000/- to Smt. Kavita Bhatnagar. After receiving the said amount, Kavita Bhatnagar gave in writing that the matter was amicably settled and she did not want to pursue the two FIRs lodged by her. She even wrote down and committed herself that she did not suspect the applicant nor she had any complaint against her (Annex. A-8). The case was ultimately closed down by the Police against the applicant. The representation filed by her remained pending which was ultimately rejected by order dated 12.11.90 without assigning any reason. According to the applicant, termination of her services is wholly illegal and void and also arbitrary, malafide and discriminatory.

4. The respondents on notice appeared and denied the contents of the O.A. that the termination of the services of the applicant was really a penalty in camouflage. They contend that the offer of appointment contained a clause that:

"Government may discharge you from service at any time during the period of probation if in their opinion your work or conduct during this period is considered unsatisfactory or shows that you are unlikely to become an efficient officer".

They maintain that during the period of probation, the applicant was not found upto the mark in the opinion of the respondents and she was not likely to become an efficient officer. She was, therefore, rightly discharged from Govt. service in accordance with the offer of appointment dated 27.11.87. The respondents further maintain that when an officer is on probation he or she does not get full benefits and his/her services can be terminated without assigning reasons as per offer of appointment. However, they clearly denied that the termination of the services of the applicant was due to

the incident which occurred in the Academy at Nagpur. They persis-

tently maintain that the services of an officer, who is on probation, can be terminated without assigning any reasons. They maintain that the order of discharge is neither a camouflage nor violative of Articles 14 and 16 of the Constitution and they were not required to give any reasons for rejecting the representation.

5. The learned counsel for the applicant, Shri G.D. Gupta, contended that no adverse remarks were ever communicated to the applicant and hence Annexure A-1, the order of her removal from service, is not only vague but also mala fide.

6. We have perused the case of Dr. Mrs. Sumati P. Shere vs. Union of India and Others (1989 (3) Supreme Court Cases 311) wherein their Lordships have pointed out that if the termination is for unsatisfactory performance, prior communication of assessment of work to the affected person is essential. If the services of an ad hoc appointee to a permanent post are terminated for unsatisfactory performance without being informed in advance about her defects or deficiencies in work, that termination is clearly arbitrary. In para 5, their Lordships of the apex court observed:

"5. We must emphasize 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."

If we put Annex. A-1 on the anvil of Shere's case we find that it has not been elaborated which of the work or which of the conduct was unsatisfactory and what showed the respondents that the applicant is unlikely to become an efficient officer. The employer always makes a periodical assessment of the work of an employee. This assessment reflects the conduct and quality of performance of the duty. During the performance of duty, there may be defects or deficiencies; there may be indifference or indiscretion on the part of the employee either by inadvertence or due to incapacity. Hence, unless that employee is told about his or her shortcomings in per-

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formance, it cannot be said to be a fair play on the part of the employer. The learned counsel for the respondents placed reliance upon the State of U.P. and Anr. vs. Kaushal Kishore Shukla (1991 (1) JUDGMENTS TODAY S.C. 108). The principles laid down in this case do not pertain to the matter in hand and we need not dwell upon it at this stage. Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of malafide, dishonesty or otherwise. If it is mala fide, even if it is passed in good faith with the best of intentions to further the purpose of legislation which confers the powers, but the authority has to act in accordance and within limits of that legislation. It can be challenged if it is extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. If this case is to be on anvil of these principles, then it can be said that the respondents did not act honestly in passing this order at Annexure A-1. Furthermore, in not conveying to her the defects in her work or deficiency in her performance, the applicant was deprived of a valuable right of making a representation against those remarks upon which the assessment of her performance was made.

7. Confidential roll reflects the assessment of the work done by the employer of the work of the employee. If the performance of the applicant was satisfactory or unsatisfactory, this assessment should have been conveyed to the applicant, otherwise the principles of natural justice will be infringed. As no other grounds were urged at the Bar, we are of the view that the impugned order at Annexure A-1 cannot be maintained. Hence this O.A. is allowed and we direct quashing the order dated 13.8.90 and Memo dated 12.11.90. In consequence, the applicant is entitled to be reinstated in service from the date her services were terminated with all consequential

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benefits, arrears of pay and allowances and seniority and promotion.

The applicant shall be reinstated within a period of ^{one and half} ~~three~~ months from the date of receipt of copy of this judgement.

8. In the facts and circumstances of the case, we direct the parties to bear their own costs.

D.K. Chakravorty
(D.K. CHAKRAVORTY)
MEMBER (A) 23/1/1992

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN (J)