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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 2576/91.

Date of decision

29/9/92

Shri S.S. Oberoi ... Applicant

v/s

Union of India & ... Respondents
Others

CORAM:

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

The Hon'ble Mr. I.P. Gupta, Member (A)

For the Applicant ... Shri V.R.S. Krishna, Counsel

For the Respondents ... Shri P.H. Ramachandani, Counsel

(1) Whether Reporters of local papers may be allowed
to see the Judgement ?

✓(2) To be referred to the Reporter or not ? Yes.

JUDGEMENT

[Delivered by Shri I.P. Gupta, Member (A)]

In this application filed under Section 19 of the Administrative Tribunal Act, 1985 the applicant has challenged the order of release dated 28th October 1991 (Annexure A-1) and has prayed that it should be set aside.

2. The applicant has served the Indian Army from 1968 to 1975. He has also served SFF, a sister unit of SSB on deputation for four years from 1975 to 1980. He was offered an appointment to the post of UDC in the pay scale of Rs 1200-2040 on a temporary and re-employment basis. This was 'for a period of one year in the first instance' extendable by three years each time till his attaining the age of 58 years. The letter of appointment is dated 5.10.1987 (Annexure A-2). The following terms of appointment are also included in the appointment letter :-

(i) The post is temporary. His permanent

appointment to the post if and when it is made permanent, however, will depend on various factors governing permanent appointment to such posts in force at the time, and will not confer on him the title on permanency from the date, the post is made permanent.

(ii) The appointment may be terminated at any time by a month's notice given by either side viz. the appointee or the appointing authority without assigning any reason. The appointing authority, however, reserve the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him of an amount equivalent to the pay and allowances for the period of notice or the unexpired ^{portion} thereof.

3. In pursuance of the aforesaid order of appointment, the applicant took over as UDC on 29.10.1987 and he was released by the Directorate of SSB from the post of UDC by order dated 28th November, 1991.

4. The Learned Counsel for the applicant contended that -

- (1) The termination is illegal since no notice has been given before termination and the terms of appointment stipulate that the appointment may be terminated at any time by a month's notice.
- (2) The applicant having continued in service for more than three years acquired a quasi-permanent status.
- (3) The termination order in reality is a disguised order of punishment for the mis-conduct and has been issued as a short-cut to conducting a valid inquiry in accordance with the rules.

(4) In this connection he cited the memorandum dated 18.7.1990 issued by the respondents where it was mentioned that the applicant had occupied some quarter which had not been taken over by the SSB and his conduct was under inquiry and termination could be the minimum action which proved guilty.

(5) The applicant could not be removed for unsuitability because his representation on the adverse remarks in the ACR of 1989-90 was rejected only on 11th December 1991 whereas the termination order had issued on 28.10.1991 i.e. prior to the rejection of the representation on adverse ACR.

5. The Learned Counsel for the applicant cited several cases to substantiate that even a temporary Government servant is entitled to protection under Article 311 of the Constitution. Even short-term temporary appointment cannot be terminated without notice. An adverse remark against which an employee gives his representation which is not disposed of cannot be taken into consideration ^{an} informing _h opinion to retire prematurely or in denying promotion.

6. The Learned Counsel for the respondents contended that the applicant was ex-service-man who was re-employed as UDC initially for a period of one year with effect from 29.10.1987 which period expired on 28.10.1988. According to the terms of re-employment embodied in the memorandum dated 5.10.1987 (Annexure A-2), the applicant's re-employment could be extended for the period of three years each time till he attains ^a the age of 58. In the initial one year of his re-employment his performance was satisfactory and then the re-employment was extended for three years from 29.10.1988 to 28.10.1991 by order dated 10.11.1988 which reads as follows :-

"Competent Authority is pleased to extend the present term of re-employment period of

Shri Surendra Dutt, UDC and Shri S.S. Oberoi, UDC in the Office of the Divisional Organiser, UP Division for a further period of three years with effect from 27.10.88 to 28.10.91 & 29.10.88 to 28.10.91 on the existing terms and conditions.

2. The date of birth of Shri Surendra Dutt and Shri S.S. Oberoi, UDCs is 02.07.1943 and 20.05.1945. "

During the extended tenure as aforesaid, the applicant's work and performance and general suitability deteriorated to a great extent. Prior to recording of adverse remarks several memoranda and warnings in writing were given to the applicant, with a view to enable him to improve his work. The policy of extension of terms of re-employment on the basis of incumbent's work, performance and general suitability is uniformly followed by the respondents in all cases of re-employment of ex-service-men. On completion of the said tenure of three years his case was assessed for extension but it was decided not to extend the tenure in view of deterioration of his work.

7. Analysing the facts and arguments of this case, we find that the ^{initial} appointment's ^{initial} letter dated 5.10.1987 clearly provided that the re-employment was for one year in the first instance extendable by three years each time till his attaining the age of 58. After one year his services were extended by three years by order dated 10.11.1988 which clearly provided that his re-employment was from 29.10.1988 to 28.10.1991. The requirement of one month's notice as stipulated in the memorandum of 5.10.1987 is for termination at any time by a month's notice. This means that this notice is required when within the extended period of re-employment the services are proposed to be terminated. This is not the case here. The applicant's appointment has come to an end by ^c afflux of time.

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The applicant cannot claim as a matter of right that his services should have been extended for another three years after the first extension of three years from 1988 to 1991.

8. The applicant was re-employed on a temporary basis. The services of a temporary Government servant can be dispensed with on consideration of unsuitability. The applicant's performance during the period 1988 to 1991 was not found satisfactory. He had been given several warnings. His representation on adverse ACRs' remarks for 1989-90 were rejected on 11th December 1991 after his release but it showed that advice and ~~the~~ warnings were issued to him to remove his short-comings before recording the adverse remarks in the ACRs.

9. It is well-settled that when a seemingly innocent order of termination is assailed as being punitive in character on the ground that it was based on charges of mis-conduct, judicial scrutiny need not be confined to the terms of the order itself and it would be open to the court as indeed obligatory on it to go behind the order and to determine from ^{to} circumstances, antecedent ^{of} the order to see for itself if the charge of misconduct was the foundation of the order or is merely motivated ^{to motivation} ^{by} Rai Singh v/s ^{by} Union of India SLR 1979(1)4657. Therefore a mis-conduct may be a motivation but if it is not the foundation of the order, the order cannot be set aside. The mere fact that the memorandum was issued about unauthorised occupation of some accommodation cannot lead to conclude that this was the foundation of the order of release. As mentioned before, the release is on account of the fact that his tenure of appointment was for a specified period and the tenure had ^{ended} ^{indeed} ^{by} ^{the} afflux of time and it was just after three years

of the first extended tenure that he was released in terms of the memorandum of his appointment.

An order of release ~~simply~~ for unsuitability ^{or} on expiry of the tenure of appointment cannot be faulted with. The release order is not ~~stigmatic~~ ^{estimatic}. The applicant cannot be said to have acquired quasi-permanent status when according to rules quasi-permanent status can be granted on two conditions namely -

(i) Continuance for more than three years;

(ii) Appointing Authority being satisfied with regard to quality of work etc. as to the suitability for employment in quasi-permanent capacity.

Such a satisfaction is not in evidence on the record of this case. Moreover, as stated earlier, here was a case of ^{an} ex-service-man who was re-employed for one year and whose tenure was extended by three years in terms of the memorandum of appointment and exactly on completion of the period he was released.

10. We find no illegality or arbitrariness or procedural impropriety in the case. The O.A. is, therefore, dismissed with no order as to costs.

I.P. Gupta
I.P. Gupta
Member (A)

2/9/92

Ram Pal Singh
Ram Pal Singh
Vice Chairman (J)

16/2/92