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CAT/7/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2789/91 199
T.A. No.

DATE OF DECISION 19.8.93

Shri Sukh Pal — Petitioner

Shri A.K.Bharaduaj — Advocate for the Petitioner(s)

Versus

Union of India & Ors. — Respondent

Shri M.L.Verma — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P.SHARMA, MEMBER (J)

The Hon'ble Mr. S.GURUSANKARAN, MEMBER (A)

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

JUDGEMENT

This judgement was pronounced by Hon'ble Mr. S.Gurusankaran, Member (A)

The applicant, who has filed this application under section 19 of the Administrative Tribunals Act, 1985, is aggrieved by the tremination of his services vide order dated 25.7.1989 and prayed for quashing the orders of termination as illegal and directing the respondents to reinstate him in service with all benefits including back wages. The respondents have filed their reply contesting the application.

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2. The essential facts of the case are not in dispute and lie in a narrow campass. The applicant was appointed initially as daily rated casual labour through employment exchange w.e.f. 17.3.1986 (Annexure A1) and subsequently as peon in a temporary capacity w.e.f. 13.12.1988 (Annexure A6) on two years probation. Vide order dated 25.7.1989, his services were terminated by an order simplicator under rule 5 (1) (Rules for short). Aggrieved by the same he has filed this application on 18.11.1991.

3. We have heard Shri A.K.Bharadwaj for the applicant and also perused the reply filed by the respondents. The respondents have raised a preliminary objection that the application is barred by limitation. The learned counsel for the applicant drew our attention to the averment made by the applicant stating that after the termination of his services, he became mentally upset and his brother had to look after him. Whe he became alright, he sent representations dated 23.8.1990, 11.1.1991, 23.8.1991 and 11.11.1991 and since he didn't get any reply to these representations, he filed this application on 18.11.1991. He also prayed that the delay, if any, may be condoned. The learned counsel cited the case of Danubha Ramsang and Ors. Vs. Union of India reported in 1991 (2) SLJ. (CAT) 40 and prayed that the applicant will forego his claim for back wages and the delay may be condoned.

4. In the case of S.S.Rathore Vs. State of M.P., AIR 1989(2) SC 335 a constitution Bench of the Supreme Court explaining the purport of S20 of the A.T. Act have held that where no final order is made, though the remedy has been availed off, a six months period from the date of preferring the appeal or making the representation shall be taken to be

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when cause of action shall be taken to have arisen. Even though the applicant's counsel stated that the termination order was served on the applicant only on 1.8.1989, it is clear from the order produced by the respondents that it was served on the applicant on 27.7.1989. Normally one would expect that a person who has been given termination notice would immediately submit a representation/appeal before the month's notice period is over. It is evident that the applicant did not do se. The reasons for the delay given by the applicant that he was mentally upset and he made the first representation only on 23.8.1990, ie. nearly a year after the services were actually terminated are not convincing. Further while the cause of action arises after six months from the date of submission of representation, where no final order is made, it does not imply that the aggrieved employee can make the appeal at any time he chooses and a very belatedly submitted appeal cannot extend the period of limitation. It is also well settled that repeated representations do not also extend the period limitation. Hence the application is hit by limitation and on that ground alone the applicant has to fail. In the state of Punjab Vs. Gurdev Singh ((1991) 4 SCC 1) it has been held that even a void or illegal order of dismissal from service has to be challenged within the period of limitation and if the limitation period is over, the court cannot give the declaration that the order is void or illegal.

5. The next point raised by the learned counsel for the applicant was that the termination order was malafide, since the respondents have themselves admitted that there were some complaints against the applicant and after enquiring into the same behind his back without giving an oppurnubity to him to explain his side, the termination orders have been passed. He,

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therefore, submitted that the impugned order has been passed by way of punishment, even though it is an order simplicitor and the veil has to be torn to see the real intentions behind the order. The learned counsel cited the cases of Miss Tripaty Kakoty Vs. Union of India and others ((1990) 13 A.T.C. 60) and Governing Council of Kidwai Memorial Institute of Oncology Vs. Dr. Pandurang Godiwalkar and another (1993 SCC (L &S) 1).

6. We have gone through the notings leading to the termination order simplicitor, which has been produced as Annexure to the reply of the respondents. It definitely makes a mention about the applicant having forged the signatures of some officers on canteen slips and also about forging some conveyance claims. But, it also brings out that the assesment report, submitted by the officers under whom the applicant had worked, was adverse. Since the applicant was appointed temporarily with effect from 13.12.1988 on a two year probation, his services have been terminated under Rule 5(1) of the Rules. The only question unsolved is that whether the respondents had sufficient material before them to come to the conclusion that the applicant is not a fit person to be continued in service. In the case of P.L.Dhingra Vs. Union of India & Ors (1958 SCR 828), the Supreme Court has held that termination of services of a temporary government servant, which is in form and substance discharge effected under the terms of contract or relevant rule cannot be regarded as dismissal because the appointing authority was actuated by the motive that the said servant shall not be continued for misconduct. Even in the case of Kidwai Memorial Institute

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(supra) cited by the applicant himself, the Supreme Court has observed as under:

> "If the decision is taken, to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment. It need not be said that the appointing authority at the stage of confirmation or examining the question as to whether the service of such employee be terminated during the continuance of the period of probation, is entitled to look into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee. Even if such employee, while questioning the validity of an order of termination simpliciter brings on the record that same priliminary enquiry or examination of some allegations had been made, that will not vitiate the order of termination."

7. In the light of the above decisions, it is clear that during the probation period of an amployee, the administration can and should take into account other general misconducts of the employee in the performance of his duties and discharge of responsibilities along with his over all performance to come to a conclusion as to whether the employee is fit to be retained and regularised in service. What is really objectionable and illegal is the discharge of an employee on a single and specific misconduct, when his overall performance is satisfacotry, as such an act would amount to punishment. Viewed in this light, the ac tion of the respondents cannot be faulted in terminating the services of the applicant after taking into consideration the overall performance including alleged misconducts. Hence, the applicant has to fail.

8. Accordingly, we find no merit in this application and accordingly the application is dismissed. No costs.

18/8/93

S.GURUSANKARAN
MEMBER (A)

J.P.SHARMA
MEMBER (J)