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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 2640 of 1992

New Delhi this the 7th day of February, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member

Shri Gopal Singh Negi
R/o RA-49 Rajapuri,
Uttam Nagar, New Delhi. ....Applicant

By Advocate Shri S.S. Tewari

Versus

1. Union of India through
Chief Secretary,
Delhi Administration,
Rajpur Road,
Delhi.

2. Deputy Secretary,
(Metropolitan Council Department),
Delhi Administration,
Old Secretariat,
Delhi-110054. ...Respondents

By Advocate Shri Gajraj Singh

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The applicant, an ex-serviceman, on 14.01.1988 was appointed on a temporary post as a Peon (Class-IV) Metropolitan Council Department, Delhi Administration. On 25.03.1992 in the purported exercise of powers under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (the rules), the Deputy Secretary of the Metropolitan Council terminated the services of the applicant. This order is being impugned in the present application.

2. The conditions of service, as material, are these:

(i) The appointment is on a temporary post. In the event of its becoming permanent, his claim for appointment thereto in substantive capacity would be considered in accordance with the rules in force.

(ii) The period of probation will be one year. The period can be extended at the discretion of the appointing authority.

(iii) The appointment may be terminated by a month's

notice given by either side. The appointing authority, however, reserves the right of terminating the service forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowance for the period of notice or the unexpired portion thereof.

3. In the counter-affidavit filed on behalf of the respondents, the material averments are these. The applicant had been taking undue advantage of being an handicapped person and had been neglecting his duties in the garb of ill-health. During the period from 25.01.1988 to 25.03.1992, the applicant remained absent on one or the other kind of leave for 349 days excluding the week-end holidays and public holidays. He attended office for actually for about 500 working days of a total period of 1520 days. Even during the period he attended office, he used to come late. He was in the habit of remaining absent from duty for days together without any prior intimation or medical certificate. He was absent from duty w.e.f. 16.1.1991 to 14.4.1991 without any intimation or medical certificate. He generally used to furnish certificates from private medical practitioners after joining duties. He was again absent from duty from 1.11.1991 to 17.12.1991 without any prior intimation although he remained hospitalised only for 14 days, i.e., from 1.12.1991 to 14.12.1991. In the rejoinder-affidavit filed, these allegations have been refuted.

4. The following contentions have been advanced by the learned counsel for the applicant:

(i) The impugned order is stigmatic.

We have seen the order, it ~~conforms~~ is strictly in accordance with the requirement of sub-rule(1) of Rule 5 of the Rules. On the face of it, no imputation of any misconduct etc. is to be seen in the order. However, on

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the basis of the aforesaid averments made in the counter affidavit, the argument advanced is that the foundation of the order is some misconduct on the part of the applicant. A careful reading of the contents of the counter-affidavit indicates that the authority passing the impugned order felt that the applicant was not a fit person to be retained in service. It took an overall picture of the working of the applicant in the department. We are satisfied that no misconduct has been attributed to the applicant even in the counter affidavit filed. We have to distinguish between the foundation of an order and the motive for passing the same. What has to be seen is whether the foundation of the order is really a misconduct on the part of the Government servant. While examining the legality of the order passed in this case, we find that motive played a dominant role.

(ii) The post is still in existence.

It is not the case of the applicant that the post has been made permanent. A post can remain temporary for years together. Therefore, nothing will turn on the mere fact that the post remains to be in existence even now. It is not a case of retrenchment that services of the applicant is being terminated on his becoming surplus. A statutory power has been exercised to do away with a temporary hand.

(iii) The period of probation is one year.

This, in our opinion, is a misreading of the memorandum referred to above. It is stipulated that the period can be extended at the discretion of the appointing authority. The law is well settled that there is nothing like automatic confirmation. A specific order of confirmation has to be passed unless the rule or the term of contract provides otherwise. The mere fact that the applicant was allowed to continue beyond one year implies that the appointing authority extended his period of probation.

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(iv) The applicant was appointed to a temporary post but his nature of appointment was permanent.

The memorandum aforementioned destroy this argument. We have already referred to the details given in the memorandum as to how the services of the applicant could be terminated. The applicant accepted the term of contract with his eyes open. It is now too late for him to turn round and say that in spite of the terms of contract, as contained in the memorandum, he was given a permanent appointment.

(v) The applicant being a handicapped, some latitude was to be given to him.

We have already referred to the details given in the counte-affidavit as to what the applicant was doing between 1988 and 1992. The question whether the latitude should or should not have been given to the applicant, was a matter entirely in the domain of the authority passing the impugned order. This Tribunal can have no jurisdiction over such a matter.

(vi) The applicant being an ex-serviceman, by passing the impugned order, the very purpose of rehabilitating has been defeated.

Ths is a matter of policy. On the whole, it cannot be said that the authority concerned acted arbitrarily in exercising the power under sub-rule(1) of Rule 5 of the rules.

(vi The authority concerned has ignored medical certificates sbumitted by the applicant.

We have already indicated that in the counter-affidavit, it is stated that the applicant proceeded on leave without submitting medical certificates for short durations. Assuming, he was justified in taking leave during those periods, it cannot be said that the authority was not justified in taking the overall

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performance of the applicant during the period 1988-92.

5. This application has no merit and it is dismissed but without any order as to costs.

(B.N. DHOUNDIYAL)
MEMBER (A)
07.02.1994

(S.K. DHAON)
VICE CHAIRMAN
07.02.1994

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