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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2122/93

New Delhi, dated the 3th March, 1994

Hon'ble Sh.N.V.Krishnan, Vice Chairman(A)

Hon'ble Sh. B.S. Hegde, Member(J)

Shri Parvesh Kumar
son of Sh. Ved Prakash
Resident of 491 Pocket / 2 Paschim Vihar,
New Delhi-110063

... Applicant

(By Advocate Sh. D.C. Vohra)

Versus

1. Govt. of the National Capital Territory of Delhi through the Chief Secretary, Delhi Admn., -5-Sham Nath Marg, Delhi-54.
2. Union of India through the Secy. Ministry of Human Resources Development (Deptt. of Education) Shastri Bhawan, N/Delhi.
3. Directorate of Training and Education through its Director Govt. of the National Capital Territory of Delhi, 5-Sham Nath Marg, Delhi-54
4. Prof. N.K. Jain, Principal, College of Pharmacy, Delhi Admn. Pushp Vihar, N/Delhi

... Respondents

(By Advocate Sh. B.S. Oberoi, proxy counsel for Sh. D.K. Sharma)

ORDER(ORAL)

(Hon'ble Shri N.V.Krishnan, Vice Chairman(A)

The applicant is aggrieved by the notice dated 7.9.93 (Ann.H) issued to him by the IVth respondent i.e. Principal, College of Pharmacy, Pushp

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Vihar, New Delhi under whom is working as a store keeper. That notice reads as follows:-

" Shri Parvesh Kumar, was appointed as Store Keeper in the pay scale of 1200-2040 vide Memorandum No.PH-1(230)/89-7880-81 dated 15.11.89. One of the terms and condition of his appointment was that he will be on a trial for a period of one year from the date of appointment and failure to complete the period of trial to the satisfaction of the competent authority, failing which he will be discharge from service without notice.

As per assessment reports submitted by his incharge in respect of his work conduct and performance, Sh. Parvesh Kumar has failed to complete his trial/probation period to the satisfaction of the competent authority.

Sh. Parvesh Kumar is hereby served with this notice and is hereby informed that his services will stand terminated after expiry of one month from the date of issue of this notice."

2. An averment is made in the O.A. that the respondents had initiated departmental proceedings under Rule 14 of the CCS(CCA) Rules, 1965 vide their order dated 15.6.1993 issuing memorandum of charges (Ann.G.I). It is stated that an enquiry officer was appointed to conduct the regular enquiry which has been completed. Final order thereon has not been passed. In the meanwhile, the impugned Ann.H.notice has been issued. In the circumstances, he alleges that impugned Ann.H.notice is not a notice for termination simplicitor. It is a malafide and arbitrary exercise of power by the respondents.

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3. In the circumstances, applicant has prayed for the following reliefs:-

- i. " An order/direction by this Hon'ble Tribunal quashing/setting aside/revoking the notice dated 7.9.93 issued by the Respondent/4, terminating the services of the applicant on the expiry of one month from the date of notice;
- ii. A direction by this Hon'ble Tribunal to Respondent/3 to follow the due process of law as laid down in the CCS(CCA) Rules, 1965 as the Inquiring Authority has already submitted its report and an order suitable deptt. action against Respondent/4 for misusing his authority in ordering the illegal termination of the services of the applicant.

4. An interim order has been passed staying the operation of the impugned order.

5. Respondents have filed a reply denying the allegation made and contend that the applicant is not entitled for any relief. In para 4.9 of their reply respondents have stated as follows:-

" That with regard to contents of Paras No.4.9 of the application it is submitted that the charges against the applicant have been upheld by Inquiry Officer. However, considering the service record of the applicant and holding the applicant not fit to be retained the appropriate authorities decided to terminate the services of the applicant and it was not considered necessary to take any action on Inquiry Officer's report."

6. When the matter came up today for final hearing, the learned counsel for the respondents submitted that such a notice cannot assailed in the light of the decisions of the Apex Court in State of Uttar Pradesh V/s K.K. Shukla

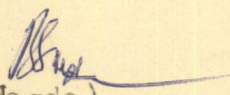
1991(16) ATC 498 (SC) and judgment of this Tribunal in Sohan Veer Singh V/s U.O.I. & Ors. Ld. counsel for the respondents states that in both these cases, the competence of the appointing authority to terminate the services of the temporary Govt. employee after holding preliminary enquiry has been upheld.

7. That is not dispute in the present case, The issue is whether the impugned Ann.H. notice is a notice for termination simplicitor of the applicant's service interms of the appointment letter given to him or it is a colourable and malafide exercise of that power ^{to} ~~had~~ really impose a penalty. It is seen that regular disciplinary proceedings has been initiated and report of the enquiry officer has been received holding the applicant guilty. In the circumstances, we are unable to hold ^{that} the Annexure H. Notice is not connected with the disciplinary proceedings ^{or} ~~would have been one~~ and that ^{it would have been an} it is not an outcome of these proceedings. It ^{is} ~~is~~ entirely different situation if, instead of a statutory disciplinary proceedings, the respondent had conducted a preliminary enquiry only to satisfy himself about the quality of the applicants work and whether his continuance was desirable.

8. In the circumstances of the case, we are of the view that impugned Ann.H. notice is issued by way of penalty and is not an innocuous notice of termination simplicitor. Therefore, it ^{deserves} ~~serves~~ to be quashed. We do so. We make it clear that it is open to the respondent to


continue the disciplinary proceeding and pass such appropriate order as deemed fit.

9. Learned counsel for the applicant also submits that the respondents have not paid him Pay and Allowance since the impugned Ann.H. notice was issued to him. We direct the respondents to disburse pay and allowances which are not paid, within a period of two months from the date of receipt of this order. O.A. is disposed of as above.


(B.S. Hegde)

Member (J)

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(N.V. Krishnan)

Vice Chairman (A)