

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

41

O.A.No. 2531/1993

Date of Decision: 28 - 5 - 1999

Shri Mal Singh, IDAS

APPLICANT

(By Advocate Shri Mrs. Meera Chhibber

versus

Union of India & Ors.

RESPONDENTS

(By Advocate Shri P.H. Ramchandani

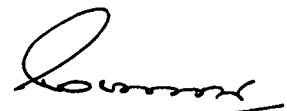
CORAM:

THE HON'BLE SHRI T.N. Bhat, Member(3)

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER
BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member(A)

Cases referred:

1. State of Punjab Vs. Dharam Singh 1968(3) SCR 1
2. Shamsher Singh Vs. State of Punjab AIR 1974 SC 2196
3. K.A. Kumar Vs. UP Hills Electronics Corpn. 1997(2) SCC 191
4. Dayaram Dayal Vs. State of MP & Anr. (1997) 7 SCC 446
5. Madan Gopal Vs. State of Punjab AIR 1963 SC 531
6. R.S. Gupta Vs. U.P. State Agro Ind. Corpn. Ltd. JT 1998(8) SC 585
7. State of Orissa Vs. R.N. Das 1961(1) SCR 606
8. Gujarat Steel Tube V. GST Mazdoor Sangh 1980(2) SCC 593
9. State of Punjab Vs. S.R. Bahadur 1968(3) SCR 234
10. A.S. Benjamin Vs. UOI
11. D.P. Banerjee Vs. S.B. Bose NCBS/Calcutta JT 1999(1) SC 396
12. Om Prakash V. Himachal Tourism Dev. Corpn. AIR 1991(2) SC 197
13. Jagdish Mitter V. UOI AIR 1964 SC 499

42

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2531/1993

New Delhi, this 28th day of May, 1999

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member(A)

Mal Singh, IDAS
3/C, Sarojini Nagar
New Delhi

.. Applicant

(By Mrs. Meera Chhibber, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Defence
South Block, New Delhi
2. The Controller General of Defence Accounts
West Block 5, R.K.Puram
New Delhi

.. Respondents

(By Shri P.H. Ramchandani, Sr. Advocate)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, an Indian Defence Accounts Service (IDAS for short) probationer of 1986 Batch, seeks to challenge A-1 and A-2 orders dated 3.10.91 and 4.10.91 respectively. By A-1 order, applicant has been placed under suspension by the Dy. CGDA and by A-2 order, services of the applicant have been terminated after one month from the receipt of the order dated 4.10.91. Consequently, applicant has sought reliefs in terms of quashing those orders and issuance of directions to the respondents to reinstate him in service from the date of his termination and to treat the entire period till the date of his reinstatement as the period spent on duty. Ancillary benefits have also been sought.

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2. Mrs. Meera Chhibber, learned counsel for the applicant seeks to challenge the aforesaid orders on the basis that the Dy. CGDA was not competent authority to issue the two impugned orders. It is in violation of Rule 22(d) of the IDAS Recruitment Rules, 1958 wherein it has been mentioned that if power to make appointment in the service/department is delegated by Government to any officer that officer may only exercise any of the powers under the Rule. The Dy. CGDA has neither the power to make appointments in the service nor has he been delegated the power by the Government to issue orders of suspension.

3. It is the case of the applicant that an order of suspension under clause 5(a) Rule 10 of CCS(CCA) Rules, 1965 shall continue to remain in force until the same is modified or revoked. In the instant case, the impugned order of suspension has neither been modified nor revoked nor any charge-sheet served or enquiry held. Accordingly, order dated 4.10.91 was issued, prima facie, for the purpose of avoiding an enquiry as warranted by Article 311(2) of the Constitution. Learned counsel further contended that administrative instructions issued by the Government of India prescribe that no employee shall be kept on probation for more than the double the normal period of probation. Applicant who had completed four years after probationary period on 18.12.90 was continued in service till the impugned termination order dated

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4.10.91 was served on 23.10.91. Thus, applicant having continued in service beyond maximum period of four years is to be deemed to have stood confirmed in the IDAS on the relevant date when he was discharged from service. In support of her contentions urged on this point, Mrs. Meera Chhibber drew support from the judgement of the apex court in the case of State of Punjab Vs. Dharam Singh 1968(3) SCR 1. That was the case where the Supreme Court held that when an officer appointed initially on probation was found to be continuing in service beyond the stipulated years for the purpose of probation without a written order of confirmation, it tantamounts to confirmation itself. Having continued in service beyond the maximum period of 4 years, as provided in the relevant IDAS R/Rules, applicant had become a confirmed officer under the respondents and his services could not be terminated in the manner they have done.

4. The learned counsel for the applicant further contended that the order of termination, being founded on "misconduct and inefficiency", is nothing but a camouflage with a view to avoiding enquiry required under Article 311(2) of the Constitution. To buttress her contentions, the learned counsel drew our attention to the judicial pronouncements of the apex court in the case case of Shamsher Singh Vs. State of Punjab AIR 1974 SC 2196. In that case, the apex court held as under:

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"The form of the order is not decisive as to whether the order is by way of punishment. Even an innocuously worded order terminating the service may in the facts and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311. In such a case the simplicity of the form of the order will not give any sanctity".

5. Shri P.H. Ramchandani, learned senior counsel for the respondents contested the claims strenuously and argued that the order of termination herein is not based on "Misconduct" but due to the fact that in the opinion of the Government, the work and performance of the applicant during the period of probation, including those extended ones, had not been satisfactory despite maximum possible opportunities having been offered to improve his performance. Applicant was informed about this in writing at the end of second and third years of probation. There is no provision to show cause notice for termination of the services during the period of probation either in R/Ruiles or any other orders on the subject, the learned counsel submitted.

6. Learned counsel for respondents further argued that A-1 and A-2 orders are based on clauses (b) and (c) under Rule 22 of IDAS Recruitment Rules, 1958. In terms of clause (b), if in the opinion of the Government the work or conduct of an official has been unsatisfactory, government may discharge him from service or might extend the period of probation for further period as Government may deem

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fit. If no action is taken by the Government under rule (b) as aforesaid, the period after the prescribed period of probation shall be treated as engagement from month-to-month terminable on either side on the expiration of one calendar month's notice in writing.

7. Respondents also contended that order of termination gets support from the instructions of Ministry of Home Affairs (MHA for short) in Memo No., F.44/1/59 dated 15.4.59. Instructions therein stipulate that except for exceptional reasons, probation could not be extended for more than double the normal period. In respect of this, learned counsel drew our attention to the following portion of instructions issued by DP&AR dated 19.5.83 in support of his stand on the subject:

"Confirmation of the probationer after completion of the period of probation is not automatic but is to be followed by formal orders. As long as no specific orders or confirmation or satisfactory completion of probation are issued to a probationer, such probationer shall be deemed to have continued on probation"

8. We have heard learned counsel for both parties and perused the records/files made available to us. Following two issues arise for our consideration:

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(i) In what circumstances, termination of a probationer's service can be said to be founded on "misconduct" and in what circumstances could it be said that the allegations were only the "motives" and

(ii) When can an order of termination of a probationer be said to contain an express stigma?

9. In case of an order of termination, either of a temporary employee or probationer, the court/Tribunal has to see whether the order was made on grounds of misconduct if such a complaint was made and in that process court/Tribunal would examine the real circumstances as well as the basis and foundation of the order complained of and if the court is satisfied that the termination of service is not so innocuous as claimed to be and if the circumstances further disclose that it was only a camouflage with a view to avoid enquiry warranted by Article 311(2) of the Constitution, then termination is liable to be quashed.

10. In the instant case, order of termination, inter alia, mentions the following:

"Whereas competent authority has terminated his services on the basis of during the period of probation his conduct and work was unsatisfactory in the opinion of Government"

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11. Applicant would allege that the respondents have actually short-circuited the enquiry and have thus invoked the power under Rule 5(1) of the CCS(CCA) Rules, 1965. According to him, the impugned order was passed by way of punishment for his misconduct and that it is not an order of termination simplicitor.

12. Respondents have denied that termination of the applicant's services is by way of punishment. In view of the background of applicant's work and conduct not being satisfactory, he was warned and since there was no improvement, his service had to be terminated by the impugned orders. Learned counsel for respondents cited the judicial pronouncements of the apex court in the cases of K.A.Kumar Vs. UP Hills Electronics Corporation 1997(2) SCC 191 and Dayaram Dayal Vs. State of MP & Anr. (1997) 7 SCC 446. As to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of the termination are the motive or foundation. After referring to some important decisions of the Supreme Court viz. Madan Gopal Vs. State of Punjab AIR 1963 SC 531, R.S.Gupta Vs. U.P.State Agro Industries Corpn Ltd. JT 1998(8) SC 585, State of Orissa Vs. Ram Narayan Das 1961(1) SCR 606, Shamsher Singh (supra), Gujarat Steel Tube Vs. Gujarat Steel Tubes Mazdoor Sangh 1980(2) SCC 593, State of Punjab Vs. S.R.Bahadur 1968(3) SCR 234 and A.S.Benjamin Vs.

(49)

UOI (CA No.1341/66 dated 13.12.66), the Supreme Court in the case of D.P.Banerjee Vs. S.N.Bose, National Centre for Basic Sciences, Calcutta JT 1999(1) SC 396 observed that "If findings were arrived at in inquiry as to misconduct behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as 'founded' on the allegations and will be bad. But if the inquiry was not held, no finding was arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad".

13. On the point whether there is an express stigma in the order, the Supreme Court in Banerjee's case (supra) observed that "There is, however, considerable difficulty in finding out whether in a given case where the order of termination is not a simple order of termination, the words used in the order can be said to contain a 'stigma'. The other issue in the case before us is whether even if the words used in the order of termination are innocuous, the court can go into the words used or language employed in other orders or proceedings referred to by the employer in the order of termination".

14. The admitted factual position is that following a complaint of impersonation against the applicant, a preliminary enquiry was ordered and

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the report dated 5.10.88 of the inquiry officer showed that there were possibilities of allegations being true. The disciplinary authority initiated major penalty proceedings on 24.1.90 and also ordered departmental enquiry. However, consequent on the termination of applicant's services, the departmental enquiry which was half-way through, has been kept in suspended animation.

15. We find that the applicant does not have an encouraging profile of service records. He is seen involved in far too many cases and ^{has} some times behaved as an official having taken leave of common sense. He has been convicted, though long after termination. It was on this basis that Shri Ramchandani, on the strength of decision in U.P.Hills Electronic Corporation's (supra) case, emphasised the need for taking totality of applicant's activities into consideration. We do not get persuaded to enter into findings based on such overall position. The issue before us is legality or otherwise of the order of termination, an incident much earlier to applicant's conviction.

16. The question is where are we to get material which attaches stigma. It may not be found in the order itself but maybe found in the proceedings referred to in the order of termination. We have, therefore, gone through the records/departmental files on this case. We find that detailed discussions on file that resulted in final order of termination have been preceded by cataloguing

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several acts of misconduct/behaviour on the part of the applicant as listed at pages 26-28 of the paper book in the OA. A definite finding has also been entered into indicating that it would be "injurious" to the service to carry on this particular type of officer permanently. In the case of Jagdish Mitter Vs. UOI AIR 1964 SC 499 the words used in the order of termination were "undesirable to be continued" ⁱⁿ service and the same was held by the Constitution Bench of the apex court as amounting to stigma. Having gone through the records of the case and the submissions made by the respondents in their counter affidavit that the applicant's conduct and performance were found to be unsatisfactory, we have no doubt in our mind that the form of termination order was only a cloak for order of punishment.

17. The above conclusion gains support from the decision of the apex court in a chain of cases like Om Prakash V. Himachal Tourism Dev. Corpn. ATR 1991 (2) SC 197 etc. It is now well settled in law that in cases of orders of termination, the court has to see whether the order was made on the ground of misconduct and if the circumstances disclose that it was only a camouflage with a view to avoid enquiry as warranted by Article 311 of the Constitution, then the termination has to be quashed.

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18. In the present case, the aforesaid observation will apply on all fours. It is not in dispute that the applicant was served with major penalty charge-sheet and the proceedings have been stayed because of termination. There is no explanation as to why departmental enquiry initiated against the applicant was not continued to its logical conclusion. Criminal case against the applicant has already been registered.

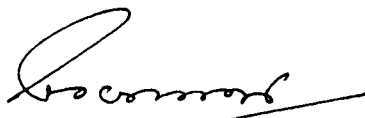
19. The criteria to be adopted in determining the nature of termination order as to whether the same is punitive or not and whether certain allegations as causes of termination acted as motive or foundation are available in paras 19-21 in D.P.Banerjee's (supra) case. Here is a case where a finding has been entered into in a preliminary enquiry as to applicant's misconduct behind his back and as also a conclusion has been arrived at as regards applicant's presence in service being "Injurious". Applying those criteria, the simple action of termination of the services of the applicant herein has to be treated as "founded" on allegations and is bad in law. Admittedly, the official performance of the applicant continued to be highly unsatisfactory, much less praiseworthy. But that cannot be the basis of illegality in actions by respondents in discharging the services of the applicant by resorting to a softer option, when the legal requirement was different. A short-cut in law has resulted in wrong-cut.

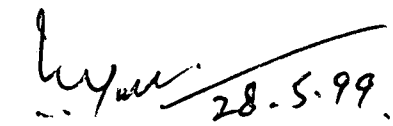
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20. In the facts and circumstances of the case, we find the impugned order of termination of services of the applicant dated 4.10.91 is not legally sustainable. We, therefore, set aside and quash the impugned orders. Respondents are directed to reinstate the applicant as Probationer within a period of 2 months from the date of receipt of this order. Applicant would also be entitled to arrears of pay and allowances from the date of termination of service to the date of reinstatement.

21. Respondents will be at liberty to proceed against the applicant for any alleged misconduct/misconducts in accordance with law. There shall be no order as to costs.


(S.P. Biswas).
Member(A)


(T.N. Bhat)
Member(J)

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