

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 920/93

1999

T.A.No.

DATE OF DECISION 4-11-99

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Ms.S.K.Srivastava

....Petitioner

Sh.B.B.Srivastava

....Advocate for the
Petitioner(s)

VERSUS

UOI through DG ICAR & Ors.

....Respondent

Sh.VK Rao with Ms.Geetanjali
Goel

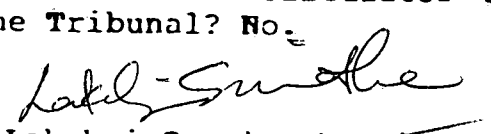
....Advocate for
Respondents.

CORAM

The Hon'ble ~~Smt. Lakshmi Swaminathan~~ Shri S.R.Adige, Vice Chairman(A)

The Hon'ble ~~Smt. Lakshmi Swaminathan~~ Smt. Lakshmi Swaminathan, M(J)

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other Benches of the Tribunal? No.


(Smt. Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 920/93

New Delhi this the 4th day of November, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Ms. S.K. Srivastava,
D/o Shri B.B. Srivastava,
R/o 2851, Peepal Mahadev,
Hauz Qazi, Delhi.

... Applicant.

By Advocate Shri B.B. Srivastava.

Versus

Union of India through

1. Director General,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.

2. Shri B.N. Prasad Pathak,
Legal Adviser,
Indian Council of Agricultural
Research, Krishi Bhawan,
New Delhi.

... Respondents.

By Advocate Shri V.K. Rao with Ms. Geetanjali Goel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 20.1.1992 by which they intimated the applicant that as she has failed to complete the period of probation in the post of Junior Law Officer satisfactorily, her services are terminated with effect from the same date, i.e. 20.1.1992. Both the appeal as well as the revision petition filed by the applicant have been rejected by the respondents by the orders dated 10.4.1992 and 29.6.1992 respectively, which have also been impugned in this O.A.

2. The relevant facts in the case are that the applicant was appointed as Junior Law Officer against a post which was advertised in 1987. The memorandum dated 28.10.1987

4 was issued offering her appointment against a temporary post of Junior Law Officer. In this memorandum, it was mentioned, inter alia, that the applicant's appointment will be governed by the Rules, Bye-laws and regulations of ICAR Society i.e. Respondent No. 1 and she will be on probation for a period of two years from the date of joining the post. She joined the said post on 21.1.1988. The applicant had been communicated adverse remarks in her ACRs for the periods 1988-89, 1989-90 and 1990-91, some of which were later expunged. By office order dated 6.9.1991, on the recommendations of the DPC and with the approval of the competent authority, the applicant's period of probation was extended for a further period of one year i.e. upto 20.1.1992. Shri B.B. Srivastava, learned counsel for the applicant, has impugned the termination order dated 20.1.1992 on a number of grounds which are set out in the O.A. He has submitted that the termination order has not been issued by the appointing authority which, according to him, is the DPC, which alone is competent to do so. He has also submitted that the principles of natural justice have been violated as the applicant had been condemned without hearing her. He has submitted that the applicant as a probationer is governed by the Central Civil Services (Temporary Service), Rules, 1965 (hereinafter referred to as '1965 Rules'), which is corroborated by Clause No.4 in the memorandum offering her appointment as Junior Law Officer. He has also very vehemently submitted that the respondents have not followed the relevant Rules which empower the competent authority to extend the period of probation and on failure to complete the period of probation to his satisfaction, she was not liable to be discharged from service without notice, immediately. He has also submitted that the order of termination has been issued under the signature of Under Secretary (A), who is not competent under the aforesaid memorandum/instructions. He has relied on Lakhi Ram

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Ex-Constable Vs. Union of India & Ors. (1989(1) SLJ 321 (CAT))
and Om Prakash Gupta Swadheen Vs. Union of India & Ors.
(1976(1) SCC 594).

3. The applicant has also assailed the termination order, on the ground that the same has been passed mala fide at the behest of Respondent 2 i.e. Shri B.N. Pd. Pathak, Legal Adviser, ICAR. The learned counsel has very vehemently submitted that when the applicant was appointed as Junior Law Officer, there were no rules existing in the ICAR as to how the fee bills of the lawyers have to be passed, and she had raised a number of queries which was not liked by him. He has also submitted that the applicant had made a number of representations to Respondent 1 pointing out her grievances against one Shri S.P. Sanwal, Section Officer, Law Section. Learned counsel has submitted that this Section Officer had worked on the directions of Respondent 2 and had unnecessarily detained the relevant files and papers which also she had brought to the attention of Respondent 2. Leaned counsel has further contended in the O.A. that Respondent 2 was annoyed with her for raising the queries regarding payment of lawyers' fee bills and as these allegations of mala fide have been made which have not been countered by Respondent 2, they should be taken as proved. He has relied on the observations of the Supreme Court in **Express Newspapers Pvt. Ltd. Vs. Union of India & Ors.** (AIR 1986 SC 872) .

4. Another ground taken by the learned counsel for the applicant is that the termination order denies equal protection to the applicant, who has been appointed in terms of the conditions contained both in clauses (3) and (4) of the Memorandum dated 28.10.1987. His contention is that if the respondents had proceeded against the applicant under clause

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(4), she would have been entitled to receive notice of one month or pay in lieu thereof, as provided in the 1965 Rules, whereas the respondents have proceeded against her under clause (3) which denied her equal protection. He has also submitted that during the period of probation, the applicant had also received increments and, therefore, she could not have been terminated from service. He relies on **Tasim Lal Verma Vs. Union of India** (1998 (2) CAT 458) and **Ajit Singh Vs. State of U.P. & Ors.** (1983(2) SLR 1).

5. Learned counsel for the applicant has submitted that the termination order is punitive in nature as the basis for the order is stated to be the applicant's unsatisfactory performance during the period of probation. He has also submitted that the period of probation, if any, is only two years and on this ground also he has submitted that the impugned order should be quashed and set aside. He has also urged that the appellate authority as well as the revisional authority's orders are non-speaking orders which again require to be set aside. He has submitted that there has been delay in writing ACRs for January, 1991 and applicant's representation was pending when the DPC had met to consider her extension of probation. He has also claimed that the principles of natural justice have been violated while passing this order as well as the appellate authority's order and the revisional authority's order. Learned counsel for the applicant has further contended that as per the DOP&T O.M. dated 26.4.1989 the applicant could be put on probation only for a period of one year as she is a direct recruit to a post for which the age of entry is 35 years or above and where no training is involved. For these reasons, he has submitted that the application may be allowed, quashing the termination orders and the applicant be reinstated with consequential benefits.

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6. The respondents in their reply have controverted the above allegations to which the applicant has filed rejoinder reiterating his stand in the O.A.

7. We have also heard Shri V.K. Rao, learned counsel. The respondents have submitted that the applicant cannot challenge the order dated 6.9.1991 extending the period of probation at this belated stage which is an after thought. The respondents have also submitted that in any case she has accepted the extended period upto 20.1.1992. They have also submitted that the extension of probation period was in any case valid and proper as it has been done by the competent authority taking into account the facts and circumstances of the case. They have submitted that the respondents had noted in November, 1988 that the applicant had hardly worked for about nine months and she had already taken four months leave on one ground or the other. To this, the learned counsel for the applicant has very vehemently submitted that the leave taken by the applicant was due to her ill health, for which she had also submitted medical certificates. They have submitted that the allegations of mala fides levelled against Respondent 2 are malicious which have been denied. Shri V.K. Rao, learned counsel, has drawn our attention to paragraph 5 of the counter affidavit in which it has been stated that the reply to this ground had been prepared on the basis of comments furnished by Respondent 2 and there is, therefore, no legal infirmity on this ground. Learned counsel has submitted that as the applicant was continuing on probation as her services were found to be unsatisfactory, the competent authority had taken a decision to terminate her services in accordance with the terms and conditions of her appointment as Junior Law Officer. Shri Rao, learned counsel, has submitted that it was for the respondents to exercise their powers either under clause (3) or clause (4) of the memorandum, by which she

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had been offered the post and there is no illegality in the impugned termination order which has been done strictly in accordance with the terms and conditions of the offer of appointment. He has also submitted that the applicant in her numerous representations to Respondent 1 has not made any specific allegation of mala fide or bias against Respondent 2 but such allegations have been made against the Section Officer, Shri Sanwal who, however, has not been impleaded as a party in the present case. He has submitted that the applicant had also filed a number of other applications earlier which have been disposed of by the Tribunal by order dated 17.8.1999 (OA 727/93 and OA 163/94). In these two applications which have been dismissed by the Tribunal, the applicant had challenged the adverse remarks recorded in her ACRs. In those applications, Respondent 1 had filed reply on behalf of Respondent 2 also, who is the same officer who has been impleaded in the present application. The Tribunal had noted in the judgement/order dated 17.8.1999 that the applicant had separately assailed her removal from service at the end of her extended period of probation in OA 920/93 which, in fact, was earlier tagged with those two O.As but was later delinked at the request of the learned counsel for the applicant. In that judgement, it was further observed that during the period of extension of probation i.e. upto 21.2.1992 when the DPC found no improvement in her work and conduct, they recommended termination of her service, which recommendation was accepted and applicant's service was terminated w.e.f. 21.1.1992 for thoroughly unsatisfactory work and conduct. In those cases also, the respondents had vehemently denied the allegations of mala fide on the part of Respondent 2 as being frivolous as there was no question of his getting annoyed with the applicant, who wanted to join LL.M course and other objections she had raised to the lawyers fee bills. Learned counsel has, therefore, contended

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a that the actions taken by the respondents are in accordance with the Rules and Instructions and the applicant has failed to prove any mala fide on the part of the respondents. They have, therefore, submitted that the O.A. may be dismissed.

8. We have carefully considered the pleadings, the submissions made by the learned counsel for the parties and the records submitted by the respondents.

9. The contention of the learned counsel for the applicant that the impugned termination order has not been passed by the competent authority as it has been issued by the Under Secretary (A) is baseless. The Tribunal in the order dated 17.8.1999 in OA 727/93 and OA 163/94 had noted, inter alia, the various periods of the applicant's absence, the extension of her initial period of probation of two years upto 20.1.1992 and the fact that when the DPC found no improvement in her work and conduct, they recommended the termination of applicant's service w.e.f. 20.1.1992. We as a Coordinate Bench, in which one of us (Hon'ble Shri S.R. Adige, Vice Chairman(A)) was also a Member, cannot reopen this issue which is also borne out by the records that the DPC had recommended that as she has not completed the extended period of probation satisfactorily, she should not be retained in service beyond the extended period. In the circumstances, there is no illegality in the order of termination which has been communicated by Office Order dated 20.1.1992 by the Under Secretary (A) to the applicant.

10. In the memo dated 28.10.1987 offering the applicant a temporary post of Junior Law Officer, one of the conditions stipulated is that she would be on probation for a period of two years from the date of her joining the post. The reliance

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placed by the applicant on the DOP&T O.M. dated 26.4.1989 that she could have been placed on probation only for a period of one year, is, therefore, rejected as the applicant has herself accepted the offer of appointment on the terms and conditions set out in the memorandum. It is not open to her to agitate the matter of probation initially for a period of one year instead of two years at this stage. Apart from that, in the Tribunal's earlier order dated 17.8.1998 these facts have also been noted, including the fact that her period of probation was extended for a period of three years on the recommendations of the DPC. Therefore, this ground also fails.

11. The applicant has herself stated that she has been communicated certain adverse remarks about her work during the period of her probation. Her contention that she has been condemned unheard and there is breach of the principles of natural justice is baseless and is rejected. The applicant's contention that because she has been granted increments during this period, does not deprive the respondents the right from taking appropriate action, based on her work and conduct in accordance with the Rules and instructions. It will be relevant to refer to Clauses (3) and (4) of the Memorandum dated 28.10.1987:

"(3) She will be on probation for a period of two years from the date of her joining the post, which may be extended at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority will render him liable to be discharged from service. During the period of probation, however, the appointing authority may terminate the service of the appointee without notice and without the payment of salary in lieu thereof.

(4) Her appointment may be terminated without assigning any reason by one month's notice on either side under Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, as extended to the Council's employees".

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The aforesaid memo. also clearly states that the appointment of the applicant is governed by the Rules, Bye-laws and Regulations of the ICAR society. Merely because they had adopted the provisions of Rule 5 of the 1965 Rules, does not mean that the respondents cannot act in accordance with the relevant instructions contained in Clause (3) of the aforesaid memo, which does not entail giving notice or salary for unsatisfactory completion of the probation period, **and the allegation of discrimination is also rejected.** We have also perused the relevant records submitted by the Respondents and are satisfied that the DPC, which is the competent authority, had exercised the discretion under clause (3) in a fair and reasonable manner, taking into account the conduct and work of the applicant and there is no illegality on this ground also.

12. Regarding the allegations of bias and mala fides levelled against Respondent 2, we find no substance in the same. Taking into account the Tribunal's earlier order dated 17.8.1999 in O.A 727/93 and O.A 164/94, the fact that respondent 1 has specifically stated in their reply that these have been denied based on the specific comments furnished to them by Respondent 2 read with some of the representations annexed by the applicant herself in which, in fact, no allegations have been made against Respondent 2, but are made against the Section Officer Shri Sanwal, we are unable to hold that the applicant has proved the allegations of mala fides. It has been held in a number of decisions of the Supreme Court (See the judgements of the Supreme Court in **Royappa Vs. State of Tamil Nadu** (AIR 1974 SC 555), **Union of India & Ors. Vs. M. Bhaskaran** (1996(1) SC SLJ 1)) that allegations of bias are easily made but not made out. This is one of those cases. It is also relevant to note that even in the earlier applications filed by the applicant, the Tribunal had not accepted these allegations against the same

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official i.e. Respondent 2. In the circumstances, the allegations of bias and mala fide alleged against Respondent 2 are also rejected.

13. We have also considered the other contentions of the learned counsel for the applicant as well as the cases which have been given in the written arguments and relied upon by them. In the facts and circumstances of the case, those cases are not relevant and do not assist the applicant, as the respondents have acted in accordance with the Rules and Instructions. We therefore, do not find any ground to interfere in the matter. O.A. is accordingly dismissed. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)


(S.R. Adige)
Vice Chairman (A)

'SRD'