

(20)

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No. 846 of 1997.

Allahabad this the 25th day of May 2004.

Hon'ble Mr. D.C. Verma, Vice-Chairman.

Hon'ble Mr. D.R. Tiwari, Member-A.

Smt. Laxmi wife of Shree Shusheer Massey,
Resident of House No.38/A Baranasi Development
Authority Colony, Kargana, Bareilly.

.....Applicant.

(By Advocate : Sri Vinay Kr. Srivastava/
Sri Subodh Kumar)

Versus.

1. Union of India,
through Secretary,
Ministry of Defence,
New Delhi.
2. Commandant,
Military Hospital,
Dehradun, Uttar Pradesh.
3. Director
Medical Service (Military)
3-B Adjutant General,
D.H.Q. P.O. New Delhi.
4. Assistant Director (Medical)
U.P. Area, Bareilly.

.....Respondents.

(By Advocate : Sri D.S. Shukla)

O R E R

(By Hon'ble Mr. D.C. Verma, V.C.)

By this O.A., the applicant has challenged the
termination order dated 11.12.1996 communicated through
letter dated 19.12.1996.

2. The facts, in brief, is that applicant's mother
late Shyama Devi died while in service. The applicant was
given appointment under Dying in Harness Rules vide order
dated 14.12.1994. The applicant joined the services of
Ward Sahayak in the Military Hospital, Dehradun on
28.01.1995. The applicant due to some personal problem



went on leave and also sent application for extension of leave. The respondents, however, by order impugned herein in the present O.A. terminated the applicant's service under C.C.S (Temporary) Rules.

3. The submission of the learned counsel is that the applicant had sent a detailed representation on 29.05.1995 and has made a request for her transfer to Bareilly. After she went on leave on 29.01.1995 due to her own ~~probation~~ ill^{ness} she joined back on 13.05.1995. She had some scuffle with Ward Sahayik Ram Pyare who abused and threatened the applicant. The incident was ^{reported} initiated by the applicant to D.M.O. but no action was taken. The applicant was being harassed every day but the matter was not being resolved by the Senior Officer. The applicant's husband is a Government employee at Bareilly. She ~~has~~, therefore, prayed for transfer to Bareilly. This was not accepted by Authorities. The applicant felt that her life is not safe at Dehradun, because of false and frivolous allegations being made against her, she again went on leave but joined in June 1995. The applicant was served with the letter dated 12.06.1995 during her leave period. As the applicant has fallen ill, she has produced the medical certificate for the period from 17.06.1995 to 17.07.1995. The applicant, however, again served with another letter dated 04.08.1995 for her absence from 16.07.1995 and she was asked to join on or before 09.09.1995. Applicant informed the department that she being pregnant and ill, she cannot live all alone at Dehradun. Besides that the applicant's mother-in-law was ill at Bareilly where the applicant's husband and children also reside. So far probation period is concerned, she be attached to Bareilly Military Hospital. The applicant's prayer was not accepted as she was informed about the result thereof, the applicant delivered a chiled.

4. Learned counsel for the applicant submitted that all facts have been brought out on record, so that the A detailed enquiry was required to be made but instead of making any enquiry, the respondents in an arbitrary manner decided to terminate the services of the applicant by the order impugned in the present O.A.

5. Learned counsel for the applicant has placed reliance on the decision of Hon'ble High Court of Allahabad in the case of Ravi Karen Singh Vs. State of U.P. and others reported in 1999 Vol-3 U.P.L.B.E.C 2263 and has submitted that appointment under dying in harness rules is a permanent appointment and hence provision of temporary service rules would not be applicable. The termination of the applicant's service under temporary service rules is, therefore, not valid.

6. Learned counsel for the parties have been heard at length.

7. We have also considered the decision cited by learned counsel for the applicant in respect of an employee appointed under U.P. Employment of Dependent of Government Servants Dying In Harness Rules 1974 and termination was under U.P. Temporary Government Servant (Termination of Service) Rules 1975. The applicant of the present O.A. was not appointed under U.P. Employment of Dependent of Government Servants Dying In Harness Rules nor her services have been terminated under U.P. Temporary Government Servants (Termination of Service) Rules 1975, thus, the provisions contained, ^{in the U.P.} ~~therefore, sought with the~~ Rules are not applicable in the present case.

8. The submission of learned counsel for the applicant is that the principle ^{has} laid down in the cited case would be applicable in the present case also. We are unable to agree with this submission. The relaxation is granted

at the time of appointment under Dying In Harness Rules but once an appointment is ~~made~~ ^{made} the employee is to be governed by service Rules ~~of~~ the post on which he has been appointed. After appointment there is no provision to grant relaxation. Appointment ~~while~~ ^{was} initially on probation ~~is~~ governed by C.C.S. Temporary Service Rules and on successful completion of service, the employee is governed by the relevant service rules. In the case in hand the services of the applicant has been terminated by order dated 11.12.1996.

9. Admittedly, the applicant has been absent on various occasion but she has tried to explain the absence period by sending representation and medical certificate. The applicant was also pregnant and ~~she~~ delivered a child during the period of her absence. There is no dispute that the applicant's husband is an employee at Bareilly. The applicant has made various allegation of harrassment. Whether the allegations are true or false is a question to ^{be} verified but if the same is true, in such tense atmosphere it was reasonably not possible for the applicant to live all alone at Dehradun during the period of pregnancy.

10. In the peculiar facts of this case, it was necessary for the authority to make an enquiry in the matter before an order of termination was passed. It is no doubt true that for order under Rule 5 of Temporary Service Rules, it is not mandatory to hold an enquiry but if the facts disclosed that the grounds of absence may be genuine, a model employer is required to find out the truth, instead of passing an arbitrary order to end the services of the employee who was appointed on compassionate ground.

11. In view of the discussion made above and also peculiar facts and circumstances of the case, the impugned order dated 11.12.1996 is quashed. It will, however, be open to the respondents to make an enquiry as per Rules and after affording an opportunity ~~of~~ ^{that} the applicant, pass an appropriate order. It is, however, made clear ^{that} by quashing of the order, the applicant would not be entitled to any back-wages for the period of absence.

Cost easy.

Dhara
Member-A

D. Venkateswaran
Vice-Chairman.

Manish/-