

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH**

**ORIGINAL APPLICATION NO.170/01318/2019**

ORDER RESERVED ON 08.04.2021

DATE OF ORDER: 31.05.2021

**CORAM:**

**HON'BLE SHRI SURESH KUMAR MONGA, MEMBER (J)**

(On video conference from Central Administrative Tribunal, Chandigarh Bench, Chandigarh)

**HON'BLE SHRI RAKESH KUMAR GUPTA, MEMBER (A)**

(On video conference from Central Administrative Tribunal, Bangalore Bench, Bangalore)

Dr. Dipti Deodhare  
Wife of Dr. Girish Deodhare  
Aged about 53 years  
Previously working as  
Scientist 'H' – Centre Director,  
Centre for Artificial Intelligence (CAI), NTRO,  
Residing at Flat No. 301, KT-26,  
Sri Ranga, 106, 6<sup>th</sup> Main, Near 8<sup>th</sup> Cross,  
Malleshwaram, Bangalore 560 003

....Applicant

(By Advocate Shri Abhilash Raju)

Vs.

1. National Technical Research Organization  
Government of India,  
Block III, Old JNU Campus,  
New Delhi 110 067  
Represented by its Chairman

2. Defence Research & Development Organization  
DRDO Bhawan, Rajaji Marg,  
New Delhi 110 011  
Represented by its Chairman

3. Union of India  
Ministry of Defence

New Delhi 110 003

Represented by its Secretary

.....Respondents

(By Shri S. Sugumaran, ACGSC for Respondents)

### **ORDER**

**PER: SURESH KUMAR MONGA, MEMBER (J)**

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 primarily laying down a challenge to an order dated 12.02.2019 issued by the National Technical Research Organization (hereinafter called as 'NTRO' for the sake of brevity) vide which she stood relieved from her duties from the post of Scientist 'H' in NTRO with effect from 12.02.2019, with further instructions to report on duty to her parent cadre in Defence Research and Development Organization (hereinafter called as 'DRDO' for the sake of brevity). The applicant has also prayed for quashing of a communication dated 13.11.2019 vide which she was intimated that no further extension of leave beyond 15.12.2019 will be considered for approval and failure to report for duty by/on 16.12.2019 will be treated as wilful absence from duty leading to initiation of disciplinary action by the competent authority. Apart from this, the applicant has also prayed for issuance of a direction to 'NTRO' (Respondent No. 1) to accept her VRS application dated 19.03.2019 for voluntary cessation of service in Scientist 'H' post with effect from 13.02.2019 and relieve her with all pensionary and retiral benefits within a period of 30 days.

2. Pledged case of the applicant herein is that she joined the services of 'DRDO' (Respondent No. 2) as Scientist 'B' on 12.09.1988. She was

transferred to CAIR on 09.03.1991 to work on R&D in Neural Networks as Scientist 'B'. She was promoted as Scientist 'C' on 01.07.1993 and thereafter as Scientist 'D' on 01.07.1998. On 01.07.2003, she was promoted as Scientist 'E' and was made the Head of the Artificial Intelligence and Neural Networks Group and continued in the said post till she came to be promoted as Scientist 'F' on 01.07.2007. On 01.07.2013, the applicant was promoted as Scientist 'G' and she was heading the Intelligent Systems and Robotics Division in CAIR.

3. It has further been averred that in January 2019, the 'NTRO' (Respondent No. 1) issued an advertisement for the post of Scientist 'H' to work as Head, Artificial Intelligence (AI) and High Performance Computing (HPC) Missions on direct recruitment basis. The applicant applied for the said post and after interview and screening process as well as the approval of the Appointments Committee of the Cabinet, she came to be selected and appointed as Head of the Artificial Intelligence (AI) and High Performance Computing (HPC) Missions at 'NTRO' on 11.05.2018. The applicant accepted the said post of Scientist 'H' and requested for some more time to join duties vide her letter dated 08.06.2018 which came to be considered favourably permitting her to join the duties by 25.06.2018. Meanwhile, she was relieved from 'DRDO' consequent upon the technical resignation from the post of Scientist 'G'. It has been stated that the applicant reported to 'NTRO' on 25.06.2018 and on her appointment as Scientist 'H', she was posted as Centre Director, Centre for Artificial Intelligence in Level 15 of the pay matrix as per the 7<sup>th</sup> CPC. It has further been averred that the applicant

had been diligently working in 'NTRO' and was in the process of establishing the Centre for Artificial Intelligence at Bangalore. She had been voluntarily and regularly submitting detailed reports of her work to headquarters of the 'NTRO'. However, without any prior intimation, her services were dispensed with and she was ordered to be repatriated to her parent cadre in 'DRDO' vide order dated 12.02.2019. She made a representation on 13.02.2019 stating therein that pursuant to her appointment as Scientist 'H' in the 'NTRO', she has been relieved from her duties as Director, CAI with instructions to report her parent cadre in 'DRDO'. It has been stated that the applicant reported to 'DRDO' in due deference to the order of 'NTRO' and requested that she may be appointed to a suitable post in 'DRDO'. On 19.02.2019, the applicant submitted one more representation stating therein that she was appointed as Scientist 'H' on 25.06.2018 and she had been working in the said post till her premature repatriation to her parent cadre in 'DRDO'. In the said representation, she made a request that her case be treated as one of transfer to 'DRDO' in public interest rather than that of premature repatriation. It has still further been averred that there was no response to said representation and, therefore, the applicant submitted yet one more representation on 19.03.2019 to 'NTRO' informing therein that her premature repatriation and instructions to report to her parent cadre had resulted into an administrative and legal limbo and that she had not received any salary since the month of February, 2019. In the said representation, the applicant made a request to reinstate her back in the services of 'NTRO'

enabling her to apply for VRS and allow her to retire in the post of Scientist 'H'.

4. It has been stated that pending consideration of her aforesaid representations, the applicant applied for leave and she was asked by 'DRDO' to furnish details of leave required, charge assumption certificate and bank details for credit of her salary. Accordingly, on 02.08.2019, the applicant submitted the details sought for such as bank account and Aadhar card details and additionally also submitted the duly filled leave application form requesting therein for sanction of Earned Leave and also stated that the reason for leave is pending consideration of her representations made consequent to her repatriation from 'NTRO' to 'DRDO'. On 08.08.2019, the applicant was informed by the respondents that as per the CCS (Leave) Rules, 1972, she can avail a maximum of 180 days of Earned Leave at a time and as such she was requested to suitably amend her leave application. Accordingly, the applicant modified her leave application seeking 180 days Earned Leave from 13.02.2019 to 10.08.2019 and 27 days Half Pay Leave from 11.08.2019 to 06.09.2019. On 13.11.2019, she received a letter from 'DRDO' stating therein that her leave applications must be submitted in proper format for claiming pay and allowances as applicable to the designation of Scientist 'G'. She was also informed that she must report to duty by 16.12.2019 and no further leave will be granted after 15.12.2019. It has been averred that no pay and allowances have been granted to applicant since 13.02.2019, the date on which she reported to 'DRDO' consequent upon issuance of the impugned order by 'NTRO'.

despite every single day of absence having been covered by the leave applications.

5. The respondents by way of filing a joint statement of reply have opposed the Original Application stating therein that the 'NTRO' is an organization under the National Security Adviser in the Prime Minister's Office. The 'NTRO' issued a recruitment notice on 11.01.2018 to fill up two posts of Scientist 'H' in Level 15 of the pay matrix on deputation basis including short term contract. Subsequently, a corrigendum was published in the Employment News (3-9 February 2018) to fill up these vacancies on deputation (including short term contract)/absorption failing which by direct recruitment basis. One of these two posts of Scientist 'H' was for heading the Artificial Intelligence and High Performance Computing (HPC) Missions at 'NTRO'. In response to these recruitment notices, the applicant, holding the post of Scientist 'G' in Level 14 of the pay matrix in the Centre for Artificial Intelligence and Robotics (CAIR) of 'DRDO' at Bangalore, applied for the aforesaid post of Scientist 'H'. Her application was forwarded by her parent organization i.e. 'DRDO' to 'NTRO' to consider her candidature for the post of Scientist 'H' on direct recruitment basis. It has been averred that after following the due process and consequent upon approval of the Appointments Committee of the Cabinet, an offer of appointment was issued by 'NTRO' vide Memorandum dated 11.05.2018 for appointment of the applicant as Scientist 'H' in Level 15 of the pay matrix as per the 7<sup>th</sup> CPC, to head the Artificial Intelligence (AI) and High Performance Computing (HPC) Missions at 'NTRO' on direct recruitment basis with effect from the date of

her assumption of charge of the post and till the date of her superannuation or until further orders, whichever is earlier. The applicant was permitted to join duty by 25.06.2018 after having considered her request for extension of joining time in view of the completion of procedural requirement on relieving from her parent organization i.e. 'DRDO'. It has further been averred that the mandate of the post of Scientist 'H' in 'NTRO' is to head Artificial Intelligence and High Performance Computing Missions in connection with highly sensitive strategic projects in the interests of the National Security. The applicant's lack of required aptitude for the kind of work that has to be done in 'NTRO', being an intelligence agency, necessitated to not to continue her appointment as Scientist 'H' during the period of probation in 'NTRO' and as such she had to be reverted to her previous organization i.e. 'DRDO' where she was holding lien on the post of Scientist 'G' immediately before her appointment in 'NTRO' as Scientist 'H' on direct recruitment basis. Pursuant to approval of the Appointments Committee of the Cabinet for premature repatriation of the applicant from the post of Scientist 'H' in 'NTRO', as per the terms and conditions of her appointment, she was relieved from 'NTRO' on 12.02.2019 with instructions to report back to her parent cadre i.e. 'DRDO' where she was holding the lien on the post of Scientist 'G'. It has further been averred that according to the terms and conditions in the offer of appointment Memorandum dated 11.05.2018, the applicant's appointment to the post of Scientist 'H' in 'NTRO' was purely on temporary basis and was terminable without assigning any reason. The applicant was under probation being appointed as Scientist 'H' in 'NTRO' on direct recruitment

basis. It has further been averred that the applicant addressed her representations dated 13.02.2019 and 19.02.2019 to 'DRDO' and the competent authority accorded approval for her joining at CAIR, Bangalore with effect from 13.02.2019 as Scientist 'G' and hence her case could not be considered enabling her to apply for VRS in 'NTRO'. It has further been averred that the applicant was intimated vide 'DRDO' letter dated 24.04.2019 to apply for leave due and admissible in proper format to the leave sanctioning authority i.e., Director, CAIR and thereafter a letter dated 02.05.2019 was received from her for grant of leave from 13.02.2019 to 28.06.2019. However, in the said letter, the kind of leave applied for was not mentioned and, therefore, vide letter dated 08.05.2019, she was requested to intimate the type of leave to be availed. The applicant, vide her letter dated 14.05.2019 intimated that she was unable to assume charge currently and requested for grant of Earned Leave. She, vide her letter dated 24.06.2019, requested for extension of leave for 40 days from 29.06.2019 to 07.08.2019. The applicant was requested vide letters dated 10.07.2019 and 25.07.2019 to submit the leave request on prescribed application form and as such, to facilitate her, a blank copy of leave application form was forwarded along with those letters. She was also requested to inform about her bank details to credit her salary amount. Thereafter, the applicant vide her letter dated 02.08.2019 submitted her leave application in the prescribed form. She requested for further extension of Earned Leave of 30 days which combined with her earlier leave requests added to a total 207 days i.e. from 13.02.2019 to 06.09.2019. The application submitted by the applicant was



also found to be incomplete as she had not mentioned her designation as required to be filled in the leave request application form. The requested Earned Leave of 207 days was also not admissible as per Rule 26(2)(i) of the CCS(Leave) Rules, 1972 under which maximum of 180 days Earned Leave can be granted at a time. Accordingly, the applicant was requested vide letter dated 08.08.2019 to suitably amend her leave application. Thereafter, a letter dated 03.09.2019 was received from the applicant requesting for amendment of originally applied leave requests to 180 days Earned Leave from 13.02.2019 to 10.08.2019 and 27 days Half Pay Leave from 11.08.2019 to 06.09.2019. The purpose of leave mentioned by the applicant was pending consideration of her representations made consequent upon her repatriation to 'DRDO'. It has further been averred that the applicant had submitted her bio data in the grade of Scientist 'G' pursuant to an intimation given by the respondents for interaction of ISO (Main)-2019 for the purposes of promotion and thereafter she also appeared for interaction for promotion from the post of Scientist 'G' to the next higher grade. The respondents have further stated that the pay and allowances of the applicant have been calculated and those have already been paid to her by way of a supplementary pay bill No. CAIR/ADMIN/FIN/922141GQ/02E/DD dated 13.02.2020. With all these assertions, the respondents have prayed for dismissal of the Original Application.

6. While filing rejoinder to reply statement, apart from reiterating the facts already pleaded in Original Application, the applicant has further submitted that her sincerity and diligence during her brief seven months' tenure with

'NTRO' is well-documented in the regular fortnightly update reports which she had sent to the Chairman, 'NTRO' and none of which evoked a single response. It has been averred that the arbitrary dismissal and the consequent repatriation of the applicant amounts to penal action without any cause as it results in reversion and loss of her seniority and the order is against the principles of natural justice. It has further been averred that the applicant's termination was a premeditated decision taken soon after her appointment and had no relation to her performance. The decision could not have been taken on the basis of her performance because when the file was moved to the Appointments Committee of Cabinet, she had spent hardly any time in the 'NTRO' and had not even been provided the basic resources needed to do her work. The then Chairman in whose tenure the applicant was selected on 25.06.2018, retired two months later on 31.08.2018. Five out of the seven months tenure of the applicant with 'NTRO' was after the change of guard and during this period she continued to work hard and was even effusively praised by Respondent No. 1 for her work as recent as in January, 2019. In her pleadings, the applicant has taken strong exception to the contention of respondents that she lacked required aptitude for the kind of work that has to be done in 'NTRO'. According to her, the adverse contentions of respondents are professionally damaging and she has denied those contentions vehemently. By narrating her various experiences earned during her entire service tenure, it has further been stated that no assessment regarding her actual professional worth could have been conclusively made without providing her the resources and necessary

means. It has further been averred that the applicant, a Scientist 'H' level officer, equivalent to Additional Secretary of the Government of India was not even issued a single warning indicating any shortcomings in her work. She was never warned about her alleged lack of aptitude neither she was appraised by different assessors nor counselled to improve her performance as required by the rules prior to arbitrary termination of her services.

7. Heard learned counsels for the parties.

8. Shri Abhilash Raju, learned counsel for the applicant, submitted that the applicant was appointed as Scientist 'H' in the 'NTRO' as a direct recruit and, therefore, the order dated 12.02.2019 relieving her from her duties could not have been issued without issuance of a prior notice in order to comply with the principles of natural justice. Learned counsel further submitted that the second limb of the order, instructing the applicant to report her parent cadre, is also without any authority of law. Shri Raju while relying upon a master circular dated 11.03.2019 (Annexure A 21) still further submitted that no lacunae in the applicant's work was pointed out to her before issuance of the impugned order. According to Shri Raju, there should have been an evaluation of applicant's performance and she should have been informed about her shortcomings. The respondent 'NTRO' was expected to be a model employer and the applicant's shortcomings should have been communicated to her. She was not even given an opportunity to correct herself and, therefore, according to Shri Raju, removal and discharge of applicant from the post of Scientist 'H' was premeditated. Shri Raju further submitted that it was not a case of deputation and since it was a

direct recruitment, therefore, there was no question of repatriating the applicant to her parent department. Learned counsel further submitted that her status as Scientist 'H' deserves to be restored in 'NTRO' enabling her to apply for VRS.

9. Per contra, Shri S. Sugumaran, learned counsel for the respondents, submitted that the applicant was directly recruited as Scientist 'H' in the 'NTRO' and she was put on probation for a period of one year. Since her work and conduct was not found to be satisfactory, therefore, she has been rightly relieved by the competent authority from the post of Scientist 'H' and ordered to be repatriated to her parent cadre i.e. DRDO as her lien was never terminated in the said organization. Learned counsel further submitted that no notice was required to be issued to the applicant before issuance of the impugned order as she was on probation. Shri Sugumaran further submitted that after issuance of the relieving order from 'NTRO', the applicant submitted her joining report in the 'DRDO' and thereafter she had been moving various leave applications one after the other. According to learned counsel, the respondents were well within their right while issuing the letter dated 13.11.2019 intimating the applicant that no further extension of leave beyond 15.12.2019 will be considered for approval and failure to report for duty by 16.12.2019 will be treated as her willful absence. Shri Sugumaran still further submitted that there is no provision in law to accept the applicant's VRS application dated 19.3.2019 as she has already been relieved from the post of Scientist 'H' in the 'NTRO'.

10. We have considered the rival contentions of learned counsels for the parties and have also perused the records.

11. The 'NTRO' is an organization under the National Security Adviser in the Prime Minister's Office. It issued a recruitment notice on 11.01.2018 to fill up two posts of Scientist 'H' in Level 15 of the pay matrix on deputation including short term contract basis. Subsequently, a corrigendum was published in the Employment News (3-9 February 2018) to fill up these vacancies on deputation (including short term contract)/absorption failing which by direct recruitment basis. One of these two posts of Scientist 'H' was for heading the Artificial Intelligence (AI) and High Performance Computing (HPC) Missions at 'NTRO'. The services of Scientist 'H' in the 'NTRO' are governed by the statutory rules known as the National Technical Research Organization, Group 'A' Scientific Cadre Posts, Recruitment Rules, 2017 (hereinafter called as the '2017 Rules') promulgated in exercise of the powers conferred by the proviso to Article 309 of the Indian Constitution. The aforesaid recruitment notice read with the corrigendum was published in consonance with the said rules.

12. The applicant herein while holding the post of Scientist 'G' in Level 14 of the pay matrix in the Centre for Artificial Intelligence and Robotics (CAIR) of 'DRDO' at Bangalore applied for the post of Scientist 'H' in response to the aforesaid recruitment notices. Her application was duly forwarded by her parent organization i.e. 'DRDO' to the 'NTRO' to consider her candidature for the post of Scientist 'H' on direct recruitment basis.

13. After following the due process and consequent upon approval of the Appointments Committee of the Cabinet (ACC), an offer of appointment was issued to the applicant vide 'NTRO' Memorandum dated 11.05.2018 for her appointment as Scientist 'H' to head the Artificial Intelligence (AI) and High Performance Computing (HPC) Missions at 'NTRO'. The said memorandum of offer of appointment contained a clause that the applicant shall be on probation for a period of one year from the date of appointment, which period may also be extended at the discretion of the competent authority. The applicant accepted the said offer of appointment and she was permitted to join her duties as Scientist 'H' by 25.06.2018. Consequent upon acceptance of her technical resignation from the post of Scientist 'G' in 'DRDO', the applicant was relieved from 'DRDO', CAIR, Bangalore vide order dated 22.06.2018 and thereafter she joined the services of 'NTRO' as Scientist 'H'. The mandate of the post of Scientist 'H' in 'NTRO' was to head the Artificial Intelligence and High Performance Computing Missions in connection with the highly sensitive strategic projects in the interests of National Security.

14. While on probation on the post of Scientist 'H' in the 'NTRO', in the assessment of the competent authority, the applicant lacked required aptitude for the kind of work which has to be done in the organization, and a necessity was felt to not to continue her appointment. Accordingly, the competent authority issued the order dated 12.02.2019 relieving her from the duties in the 'NTRO' with immediate effect. She was further instructed to

report her parent cadre in the 'DRDO' where her lien was still maintained in the cadre of Scientist 'G'.

15. A perusal of Rule 7 of the '2017 Rules' governing the services of Scientist 'H' in the 'NTRO' reveals that an officer can be confirmed to his appointment on satisfactory completion of his probation period. Clause 9 of the schedule annexed with the said rules prescribes a period of one year of probation for direct recruits.

16. In the case in hand, the applicant had not completed the stipulated probation period of one year and in the assessment of the competent authority she lacked the required aptitude for the kind of work that has to be done in the 'NTRO' and, therefore, the order dated 12.02.2019 relieving her from the post of Scientist 'H' was issued. Whether before issuance of such an order, a notice was required to be issued to the applicant in order to comply with the principles of natural justice, is a first and foremost question which has arisen for consideration of this Tribunal.

17. Very often, an appointment in public service is initially made on probation. The reason as to why a period of probation is prescribed and how such period has been understood in service jurisprudence has been discussed at length by the Hon'ble Supreme Court in **Ajit Singh vs State of Punjab** 1983 (2) SCC 217. The relevant observations made in para 7 of the report are reproduced here as under:

*" 7. When the master-servant relation was governed by the archaic law of hire and fire, the concept of probation in service jurisprudence was practically absent. With the advent of*

*security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject-matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed by way of punishment from service unless he is given an opportunity to meet the allegations if any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master-servant relationship put the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. Period of probation gave a sort of locus penitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation."*

18. In the oft-cited decision in **Parshotam Lal Dhingra vs Union of India** AIR 1958 SC 36, the concept of probation has been enunciated in these words

*".....An appointment to a permanent post in government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on trial".*

The Hon'ble Supreme Court has further observed that the principle embodied in Article 310 (1) that the government servants hold office during the pleasure of the President or the Governor, as the case may be, is qualified by the provisions of Article 311 which gives protection to the government servants. The net result is that it is only in those cases where the government intends to inflict the penalties of dismissal, removal or reduction in rank upon a government servant, he must be given a



reasonable opportunity of showing cause against the action proposed to be taken and, therefore, it follows that if the termination of service is sought to be brought about otherwise than by way of punishment, then the government servant whose service is so terminated cannot claim the protection of Article 311 (2) of the Indian Constitution.

19. It is well settled that generally a probationer does not acquire any substantive right to the post and cannot complain if his service is terminated at any time during the probationary period. The probationary appointment, in our considered opinion, by its very nature is of a transitory character and in the absence of any special contract or special rule regulating the condition of service, the implied term of such appointment is that it is terminable at any time. Right of an employee to continue arises only on confirmation. In the case in hand, the condition with regard to probation is embodied in the '2017 Rules' governing the services of Scientist 'H' in the 'NTRO'. The said condition was duly incorporated in the 'NTRO' Memorandum dated 11.05.2018 making an offer of appointment to applicant for the post of Scientist 'H'. The applicant having accepted the terms and conditions stipulated in the said memorandum cannot be permitted to turn back if her services have not been found to be satisfactory in the assessment of the competent authority.

20. In **Jagdish Mitter vs Union of India** AIR 1964 SC 449, the Hon'ble Supreme Court has observed as under:

*".....On the authority of the decision of this Court in the case of Parshottam Lal Dhingra, 1958 SCR 828: (AIR 1958 SC 36) it must be*

*held that the termination of services of the temporary servant which in form and in substance is no more than his discharge effected under the terms of contract or the relevant rule, cannot, in law, be regarded as his dismissal, because the appointing authority was actuated by the motive that the said servant did not deserve to be continued for some alleged misconduct.”*

21. In **Champak Lal vs Chimanlal Shah vs Union of India** AIR 1964 SC 1854, in paragraph 11, their Lordships have observed as under:

*“It is well known that government does not terminate the services of a public servant, be he even a temporary servant, without reason; nor is it usual for government to reduce a public servant in rank without reason even though he may be holding the higher rank only temporarily. One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case there is nothing further to be said and his services terminate when the post comes to an end. Similarly a government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above, the government may find it necessary to terminate the services of a temporary servant if it is not satisfied with his conduct or his suitability for the job and/or his work. The same may apply to the reversion of a public servant from a higher post to a lower post where the post is held as a temporary measure. This dissatisfaction with the work and/or conduct of a temporary servant may arise on complaint against him. In such cases two courses are open to government. It may decide to dispense with the services of the servant or revert him to his substantive post without any action being taken to punish him for his bad work and/or conduct. Or the Government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of Art. 311(2).”*

22. On a review of the various judicial pronouncements, their Lordships of the Supreme Court in **State of Uttar Pradesh vs Kaushal Kishore Shukla** 1991 (1) SCC 691, have summarised the position of law in the following words:

*“Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant. If it decides to take punitive action may hold a formal inquiry by framing charges and giving opportunity to the Govt. servant in accordance with the provisions of Art. 311 of the Constitution. since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well-settled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order. In Parshotam Lal Dhingra v. Union of India, a Constitution Bench of this Court held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of the use of such expressions, the Court may determine the true nature of the order to ascertain whether the action taken against the government servant is punitive in nature. The Court further held that in determining the true nature of the order the Court should apply two tests namely: (1) whether the temporary government servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary government servant is by way of punishment. It must be borne in mind that a temporary government servant has no right to hold the post and termination of such a government servant does not visit him with any evil consequences. The evil consequences as held in Parshotam Lal Dhingra's case do not include the termination of services of a temporary government servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in Dhingra case has been reiterated and affirmed by the Constitution Bench decisions of this Court in the State of Orissa vs. Ram Narayan Das; R.C. Lacy v. The State of Bihar; Champaklal Chimanlal Shah v. The Union of India; Jagdish Mitter v. The Union of India; A.G. Benjamin v. Union of India; Shamsher Singh v. State of Punjab. These decisions have been discussed and followed by a three Judge Bench in State of Punjab v. Shri Sukh Raj Bahadur.”*

23. In **K.V. Krishnamani vs. Lalit Kala Academy**, 1996 (4) SLR 504 (SC), the Hon'ble Supreme Court has held that the very object of the probation is to test the suitability and if a probationer is not found suitable, the appointing authority certainly has the power to terminate his services.

24. In **Muir Mills Unit of N.T.C. (UP) Ltd vs Swayam Prakash Srivastava and Anr** 2007 (1) SCC 491, the Hon'ble Supreme Court has observed that even if the termination order states that services of a probationer have been terminated on account of his work being not satisfactory, the order cannot be said to be stigmatic. It has also been held in the said judgment that the principles of natural justice need not be followed for termination of service of a probationer. The relevant observations from paragraph 44 and 45 of the report are reproduced here as under:

*“44. Also in Registrar, High Court of Gujarat vs. C.G.Sharma, it was observed that an employee who is on probation can be terminated from services due to unsatisfactory work.*

*45. This Court's decision in the case of P.N. Verma vs. Sanjay Gandhi PGI of Medical Studies, can be referred to in this context, where it was held by this Court that the services of a probationer can be terminated at any time before confirmation, provided that such termination is not stigmatic. This Court in State of MP vs. Virendera Kumar Chourasiya also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of audi alteram partem are not applicable.”*

25. In **Rajesh Kumar Srivastava vs State of Jharkhand and Ors** 2011 (4) SCC 447, the Hon'ble Supreme Court has held that while taking a decision to terminate the services of a probationer, no notice is required to

be issued nor is the probationer required to be given any opportunity of hearing. Relevant observations from para 10 of the report are reproduced here as under:

*“10. The aforesaid decision to release him from service was taken by the respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct.”*

26. Recently in the matter of **Rajasthan High Court vs Ved Priya and Anr** 2020 (3) All India Services Law Journal 20, the Hon'ble Supreme Court has held that the entire objective of probation is to provide the employer an opportunity to evaluate the probationer's performance and test his suitability for a particular post. Such an exercise is a necessary part of the process of recruitment, and must not be treated lightly. Written tests and interviews are only attempts to predict a candidate's possibility of success at a particular job and the true test of his suitability is actual performance of duties which can only be applied after the candidate joins and starts working.

27. While testing the case in hand on the parameters as stated in the foregoing paragraphs, we do not find any infirmity in the order dated 12.02.2019 vide which the applicant has been ordered to be relieved from the post of Scientist 'H' by the competent authority in the 'NTRO', as in the assessment of the competent authority, the applicant's services have been

found to be unsatisfactory. In our considered view, the order being simpliciter in nature does not visit any evil consequences upon the applicant and, therefore, there was no need to issue a prior notice or to afford any opportunity of hearing to the applicant.

28. We also do not find any substance in the plea raised on behalf of the applicant that the order dated 12.02.2019 was a premeditated decision taken soon after her appointment and had no relation to her performance as nothing has been produced on record by the applicant to substantiate the said plea.

29. In **S.P. Vasudeva vs State of Haryana** 1975 (2) SLR 740 (SC), the Hon'ble Supreme Court has held that the order of reversion of a person, who had no right to the post, does not show ex-facie that he was being reverted as a measure of punishment and does not cast any stigma on him. The Courts cannot normally go behind the order to see if there were any motivating factors behind that order. Paragraph 5 of the report reads thus:

*" We may in this connection point out that where an order of reversion, as in the present case, of a person who had no right to the post, does not show ex facie that he was being reverted as a measure of punishment or does not cast any stigma on him, the Courts will not normally go behind that order to see if there were any motivating factors behind that order. Certain other cases have taken the view that it is open to the Court to go behind the order and find out if it was intended as a measure of punishment and if so whether the formalities necessary have not been followed. In cases where enquiries have been held before orders of reversion of a probationer to his former lower post or discharge of a probationer or discharge from service of a temporary servant were passed, certain decisions have taken the view that where the enquiry was held in order to find out the suitability of the official concerned the order would not be vitiated. In certain other cases it has been held that the enquiry was held with a view to punish and as the enquiry did not satisfy the requirements of [Article 311](#) the punishment was bad. It appears to us that this theory as to whether the reversion to a lower post of a probationer*

*in a higher post, or the discharge of a probationer, or the discharge from service of a temporary servant was meant as a punishment leads to a very peculiar situation. After all, if such an order gives no reasons the Court will not normally interfere because ex facie there is nothing to show that the order was intended as a punishment. But if the superior official dealing with that case, in order to satisfy himself whether the official concerned could be continued in service, makes enquiries or holds enquiries there is the risk of its being held that the enquiry was really intended for the purpose of punishment. Thus a bona fide attempt to decide whether the official concerned should be continued leads to this risk. There could be no greater punishment than discharge from service and it makes little difference to the Government servant whether he is simply discharged or discharged after an enquiry to find out his suitability. Therefore, if a simple discharge from service is upheld but a discharge after the superior official concerned satisfies himself about the official's fitness to be continued further in service is not upheld on the ground that the order was intended as a punishment it is a curious situation. After all no Government servant, a probationer or temporary, will be discharged or reverted, arbitrarily, without any rhyme or reason. If the reason is to be fathomed in all cases of discharge or reversion, it will be difficult to distinguish as to which action is discharge or reversion simpliciter and which is by way of punishment. The whole position in law is rather confusing. We think it is time that the whole question was considered de novo and it would be better for all concerned and avoid a lot of avoidable litigation if it should be held that the reversion of a probationer from a higher to a lower post, or the discharge of a probationer, or the discharge from service of a temporary servant cannot be questioned except on the basis of mala fides in the making of the order. This Court will not be burdened with a lot of work of a kind about which the feeling of almost all the Judges has been that it is better that they do not come to this Court."*

30. Equally untenable is the plea of Shri Raju, learned counsel for the applicant, when he argued that the order impugned herein is contrary to the master circular dated 11.03.2019 and, therefore, the same cannot be sustained; as in our opinion, the employer cannot be compelled to rely upon a circular dehors the well enunciated principles laid down by the Hon'ble Supreme Court through various judicial pronouncements which have been enumerated in the foregoing paragraphs.

31. We also do not find any infirmity in the second limb of the order dated 12.02.2019 wherein the respondents instructed the applicant to report back

to her parent cadre i.e. 'DRDO' as her lien was still maintained in the said organization. The fact cannot be ignored that after issuance of the order dated 12.02.2019, the applicant reported back to her parent organization i.e. 'DRDO' on the very next day i.e. 13.02.2019 and the competent authority also accorded approval to her joining at CAIR, Bangalore as Scientist 'G' with effect from 13.02.2019. Even to consider her case for promotion to next higher grade in 'DRDO', she was further intimated for the purposes of interaction of ISO (Main) 2019 and pursuant thereto, she submitted her bio data in the grade of Scientist 'G'. She also appeared for interaction for promotion from the post of Scientist 'G' to the next higher grade; and the fact in this regard has not been disputed by the applicant.

32. Since the applicant, while acting upon the order dated 12.02.2019, has reported back to her parent cadre on the post of Scientist 'G' and has also appeared for interaction for promotion to the next higher grade, therefore, we do not see any reason to allow her prayer for issuance of a direction to 'NTRO' to accept her VRS application dated 19.03.2019 for voluntary cessation of service in Scientist 'H' post with effect from 13.02.2019. Even the applicant's counsel has failed to cite any rule/instructions/office memorandum to substantiate the applicant's said claim.

33. So far as communication dated 13.11.2019 issued by the respondents is concerned, the applicant's prayer for quashing of the said communication in the present Original Application, in our opinion, is highly misplaced. A perusal of the record reveals that after issuance of order dated 12.02.2019



by 'NTRO', the applicant vide her letter dated 13.02.2019 submitted her joining report to Director, CAIR in 'DRDO' which was duly accepted by the competent authority. Thereafter, on 19.02.2019, the applicant requested for grant of leave for a period of three months with effect from 13.02.2019. The said letter was followed by another communication dated 19.3.2019 vide which the applicant requested the Chairman, 'NTRO' to treat the said communication as three months' notice for premature release under VRS. Though the applicant had already been relieved from 'NTRO' on 12.02.2019 but still in her communication dated 19.03.2019 addressed to Chairman, 'NTRO', she requested for grant of leave for a period of three months with effect from 13.02.2019.

34. It is beyond our comprehension that after issuance of order dated 12.02.2019 by 'NTRO' what was the occasion with the applicant to forward such a communication dated 19.03.2019 requesting therein to treat the said communication as notice for her premature release under VRS. Even her request for grant of leave with effect from 13.02.2019 in the said communication was totally uncalled for. On 24.04.2019, the 'DRDO' vide its letter addressed to the applicant requested her to apply for leave due and admissible in proper format to the leave sanctioning authority i.e., Director CAIR. Thereafter, a letter dated 02.05.2019 was received from the applicant for grant of leave from 13.02.2019 to 28.06.2019. In the said letter, even the kind of leave applied for was not mentioned by her and, therefore, the respondents vide their letter dated 08.05.2019 had to request her to intimate the type of leave to be availed. Consequent thereto, the applicant vide her

letter dated 14.05.2019 intimated the respondents that she was unable to assume charge and requested for grant of Earned Leave. She, vide her letter dated 24.06.2019, requested for extension of leave for 40 days from 29.06.2019 to 07.08.2019. However, vide letters dated 10.07.2019 and 25.07.2019, the respondents again requested her to submit her request for leave on prescribed format and to facilitate her, a blank copy of leave application form was also forwarded to her. She was also requested to inform her bank details enabling the respondents to credit in her account the amount of her salary. After such a long drawn communication, the applicant vide her letter dated 02.08.2019 submitted her leave application in the prescribed format. She requested for further extension of leave of 30 days which combined with her earlier leave requests added to a total 207 days i.e. from 13.02.2019 to 06.09.2019. The said leave application was also found to be incomplete as she failed to mention her designation which was required to be filled in the leave request application form. Even the request for 207 days of Earned Leave was not admissible as per rule 26 (2) (i) of the CCS (Leave) Rules, 1972 according to which maximum of 180 days Earned Leave can be granted at a time and, therefore, the applicant was requested vide 'DRDO' letter dated 08.08.2019 to suitably amend her leave application. Thereafter on 03.09.2019 a letter was received from the applicant by the respondents requesting for amendment of originally applied leave request to 180 days Earned Leave from 13.02.2019 to 10.8.2019 and 27 days Half Pay Leave from 11.08.2019 to 06.09.2019.

35. In the afore-stated facts and circumstances, we do not find any infirmity or illegality in the communication dated 13.11.2019 vide which the applicant was intimated that no further extension of leave beyond 15.12.2019 will be considered for approval and her failure to report on duty by 16.12.2019 will be treated as her wilful absence from duty leading to initiation of disciplinary action by the competent authority. In our opinion, after joining back to her parent organization, the applicant cannot be permitted to avoid her duties on the post of Scientist 'G' on one pretext or the other. The plea raised on behalf of the applicant that the communication dated 13.11.2019 was arbitrarily issued by the respondents is hereby repelled.

36. Even otherwise, in view of the mandate of Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter called as the '1987 Rules'), the present Original Application seeking three different reliefs cannot be maintained. A perusal of Rule 10 reveals that an application before this Tribunal should be based upon a single cause of action and one or more reliefs can only be claimed provided they are consequential to one another. Rule 10 of the '1987 Rules' is reproduced here as under:

*"10. Plural remedies. - An application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another."*

37. The prayer clause of the Original Application divulges that in sub para (i), the applicant has prayed for quashing of Memorandum dated 12.02.2019 vide which she has been relieved from the post of Scientist 'H' by the

‘NTRO’ (Respondent No. 1). In sub para (ii) of the prayer clause, she has prayed for quashing of a communication dated 13.11.2019 issued by the ‘DRDO’ (Respondent No. 2) intimating her that extension of leave beyond 15.12.2019 shall not be considered for approval and her failure to report on duty by 16.12.2019 will be treated as her wilful absence from duty leading to disciplinary action by the competent authority.

38. In the case in hand, even if this Tribunal arrives at a conclusion to quash the Memorandum dated 12.2.2019 issued by NTRO ( Respondent no.1), the communication dated 13.11.2019 issued by DRDO ( Respondent No.2) still cannot be quashed as a consequential relief as in our opinion both the cause of actions are different.

39. In sub para (iii) of the prayer clause, the applicant has sought a mandate of this Tribunal to NTRO (Respondent No. 1) to accept her VRS application dated 19.03.2019 for her voluntary cessation of service in Scientist ‘H’ post with effect from 13.02.2019.

40. In our considered view, the relief claimed in sub para (iii) of the prayer clause can also not be termed to be a consequential relief of quashing of Memorandum dated 12.02.2019 as this is again a separate cause of action.

41. A conjoint reading of all the three sub paras in the prayer clause suggests that the present Original Application has been filed by the applicant to avail three different reliefs which, in our opinion, cannot be maintained in terms of the mandate of Rule 10 of the ‘1987 Rules’.

42. In the conspectus of discussions made hereinabove, the Original Application being devoid of merit, deserves to be dismissed.

43. Accordingly, the Original Application is hereby dismissed. However, there shall be no orders so as to costs.

**(RAKESH KUMAR GUPTA)**  
**MEMBER (A)**

**(SURESH KUMAR MONGA)**  
**MEMBER (J)**

/ksk/