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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration(TA) no. 659/86

Parmanand plaintiff
applicant.

Versus

The Union of India, through the
Secretary, Ministry of Defence,
Government of India, New Delhi. ... Respondent.

Hon'ble D.S. Misra, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon'ble D.S. Misra)

This is an original suit no. 166 of 1984 which
was pending in the court no.1 of the Munsif, Jhansi
and has come on transfer under Section 29 of the A.T.
Act, XIII of 1985.

2. The suit of the plaintiff is against
the order of his removal dated 20.7.82 passed
by the Garrison Engineer, Babina Cantt, Jhansi on
the ground of plaintiff's unauthorised absence
from duty w.e.f. 16.11.1981. It is contended
that the plaintiff was not served with any chargesheet
and no departmental inquiry whatsoever was held
against him on the ground of his unauthorised
absence from duty, nor was any show cause notice
given to him. He has sought a declaration that the
order of removal dated 20.7.1982 is illegal, arbitrary,
without jurisdiction and against the principles of
natural justice and he continues to be working upon
the post of Mazdoor with all benefits of the said
post including salary and allowances.

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2. The suit was contested by the defendant^s, who have stated that the plaintiff was appointed as Mazdoor on 2 years' probation w.e.f. 7.4.81 by the Garrison Engineer vide letter dated 2.4.1981 (copy CA1); that the plaintiff remained absent^{from} 7.8.81 to 1.9.1981 and his explanation was called vide letter dated 22.8.1981, but the plaintiff did not submit any reply (copy CA2); that on reporting^{for} duty, he was verbally warned by his superior officer; that he again remained absent from duty without intimation, or permission from 16.11.1981 to 20th July, 1982 for which his explanation was asked vide letter dated 7.1.1982 (copy C.A.3); that the plaintiff did not give any reply nor did he join duty; that^{as} the performance of the plaintiff was found unsatisfactory and not fit to be retainedⁱⁿ service, his services were terminated vide letter dated 20.7.1982; that the services of the plaintiff have been terminated during his probation period as per terms and conditions given in the appointment order.

3. In the rejoinder application, filed by the plaintiff, he denied the receipt of the letters dated 22.8.1981 and 7.1.1982^{and stated}; that during the period 16.11.1981 to 15.7.82 he was sick and under the treatment of Dr. Biswambhar Dayal of Gwalior and at the Mental Hospital Gwalior; that he reported for duty on 16.7.1982 along with the medical certificates, but these certificates were not accepted and the plaintiff was removed from his post without giving him any opportunity of showing cause; that the

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plaintiff was appointed to the post of Engineer in Chief and not by the Garrison Engineer, who was lower in rank and he was not competent to order the removal of the plaintiff.

4. We have heard learned counsel for the parties and have carefully perused the documents on record. On the question of competence of the Garrison Engineer passing the order of removal of the plaintiff, the plaintiff has relied upon annexure RA-3 which is the copy of GE Babina Part II, Order no. 15 dated 13.4.1981 which contains the particulars of the plaintiff and the date of his appointment as Mazdoor after relaxation of age under the authority of E-In C's Br. Letter no. 65926/1468/CC/EIC dated 26.11.1980 and GE Babina No. 1157/1095 EIB dated 2.4.1981. We have considered the contention of the plaintiff and we are of the opinion that this letter does not support his contention that Engineer in Chief was his appointing authority. On the other hand the copy of the appointment letter available Annexure CA 1, clearly mentions that the offer of appointment to the plaintiff was given by the Garrison Engineer, Jhansi and not by the Engineer in Chief. The Engineer in Chief may have granted exemption from the upper age limit but the order of appointment is that of Garrison Engineer.

5. The second contention of the plaintiff is that his services could not be terminated without holding a disciplinary inquiry. Learned counsel for the plaintiff cited the following case law in support of this claim of the plaintiff.

1. AIR 1982, SC, 854 (L. Robert D'Souza Versus Executive Engineer, Southern Railway). The services of appellant in this case were terminated because of

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his unauthorised absence without holding any inquiry or giving any show cause notice. However, the appellant in that case had worked from July 1, 1948 to October 8, 1974. It was held that the appellant had acquired the status of a temporary railway servant and was ^{also} covered under Section 25F of the Industrial Disputes Act, as well as Rule 2505 of the Railway Establishment Manual. It was held that the termination of service would constitute retrenchment and for not complying with the precondition to valid retrenchment, the order of termination was illegal and void. We have considered this case law and we are of the opinion that this case law is not applicable to the case of the plaintiff, as he was appointed on probation for two years.

2.A.I.R. 1966, S.C., 1364 (Mafatlal Narandas Barot Versus J.D. Rathod, Divisional Controller, State Transport Mehsana and others). In this case the applicant was a permanent employee of the State Transport Corporation and his services were terminated for unauthorised absence. It was held that the order of termination was in contravention of the provisions of Class (14)(b) of the Regulations applicable to the employee and also against the principles of natural justice. The order of termination was quashed. We are of the opinion that this case law is also not applicable to the case of the plaintiff who was appointed on probation.

6. The third contention of the plaintiff is that his services were terminated without ~~the~~ issue of show cause notice. The

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defendants have filed copy of the letters sent to the plaintiff who had absented from duty without any intimation or application for grant of leave. In the letter dated 7.1.1982(CA2) he was asked to report for duty forthwith failing which suitable action would be taken against him. He was also asked to show cause regarding his absence and to explain why disciplinary action should not be taken against him. The plaintiff has merely denied the receipt of these letters without indicating any short-coming in the despatch of the letters. The order of removal passed by the defendant no.1 has clearly stated the reasons for the impugned order passed in terms of the offer of appointment given to him. The concluding sentence of para(b) of the offer of appointment(copy CA1) clearly states that "failure to complete the period of probation to the satisfaction of the competent authority will render you liable for termination of service without any notice." We are of the opinion that the defendants did try to serve a show cause notice on the plaintiff and there is no default or lack of discharge of the responsibility on the part of defendants in this regard. Regarding the procedure for termination of the services of a person appointed on probation there are several pronouncements of the High Courts and the Supreme Court in which it has been held that the order of termination can be passed for unsatisfactory work and conduct without holding an inquiry or issuing a chargesheet or show cause notice. We are of the opinion that there is no illegality in the issue of the impugned order of the termination of the service of the plaintiff.

For the reasons mentioned above, we are of the opinion that the plaintiff has failed to establish his claim and the suit is dismissed without any order as to costs.

A.M.

J.M.

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