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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 1238 of 1987

Km. Bidhata Negi .... Applicant.

Versus

Union of India & another .... Respondents.

Hon'ble D.K. Agrawal, J.M.  
Hon. K. Obayya, A.M.

(By Hon. D.K. Agrawal, J.M.)

By this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the order of termination dated 5.12.1987 passed under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965.

2. Briefly, the facts are that the applicant, viz. Km. Bidhata Negi, was appointed as a Lower Division Clerk (LDC) in the Garhwal Rifles Lansdowne (U.P.) by an order dated 16.10.1986 in temporary capacity on the condition that her services are liable to be terminated at any time without assigning any reason, with one month's notice. The impugned order is to the effect that the services of the applicant stand terminated after the expiry of period of one month from the date of service of notice.

3. The only question to be determined is as to whether the termination order is a termination simpliciter or the result of any punitive action. The respondents alleged that she was removed on the ground of unsuitability and that no stigma is attached to the order of termination. The record of the applicant has also been placed before us. A perusal of the same discloses that she was given a warning in February, 1987. There was also a remark about her <sup>lack of</sup> proficiency in work and behaviour with the superiors. The legal position is clear that where a decision to terminate the services

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of a Government servant has been taken on the ground of unsuitability of the servant in relation to the post held by him, which was not by way of any punishment and no stigma was attached to him or her by reason of the termination of services, termination could not be said to be vitiated for non-observance of Article 311(2) of the Constitution. In the case of Oil and Natural Gas Commission and others v. Dr. Md. S. Iskander Ali (AIR 1980 SC 1242), their Lordships of the Supreme Court have observed that even if the history of the service of a servant appointed in a temporary post indicated that his work had not been satisfactory and he was not found suitable for being retained in service and although material was available for initiating an enquiry but it was not started and no punishment was inflicted on him, the appointing authority can terminate the services of the servant in such circumstances because such an order of termination does not attract Article 311 of the Constitution of India. It has also been held in the said decision that in such a case, even if misconduct, negligence, inefficiency influenced might be the motive or the inducing factor which / ~~influence~~ an the employer to terminate the services of the employee a power which the employer undoubtedly possessed, even so as under the terms of appointment of the employee such a power flowed from the contract of service, termination of service could not be termed as penalty or punishment.

4. In view of such legal position, we do not find any material on record to hold that the impugned order of termination was bad in law in any manner whatsoever. It may also be mentioned that the applicant, a lady, has indirectly suggested mala fides on the part of one of his superiors. However, the details have not been brought out nor the superior has been arrayed as a party in personal capacity. Therefore, the allegation of malice against him cannot be looked into. Thus having given our best consideration to the facts and circumstances of the case, we are of the opinion that

*D. K. Biju*

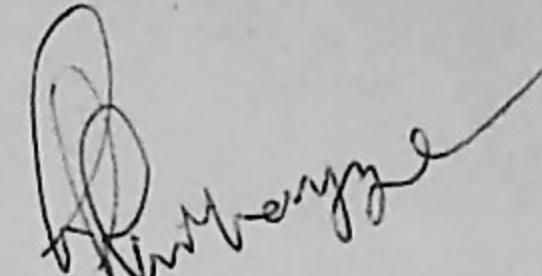
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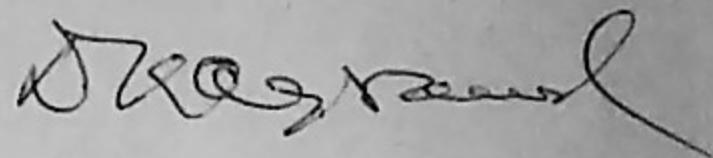
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the termination is a termination simpliciter with no stigma and, therefore, the same cannot be quashed.

5. In the result, the application is dismissed with no order as to costs.



MEMBER (A)



MEMBER (J).

Dated: November 30<sup>th</sup>, 1990

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