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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

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Registration T.A. No. 234 of 1987

(Arising out of Writ Petition No. 1394 of 1983)

Smt. Kela Devi ... Petitioner

vs

Controller of Defence Accounts
and others ... Respondents

Hon' Mr D.K. Agrawal, J.M.

Hon' Mr K. Obayya, A.M.

(By Hon' Mr K. Obayya, A.M.)

Writ petition No. 1394 of 1983 filed in the High Court of Judicature at Allahabad for quashing the order dated 14.12.82 contained in Annexure-4 whereby services of the petitioner were terminated, stood transferred to this Tribunal under section 29 of the Administrative Tribunal's Act, 1985, and registered as T.A. No. 234 of 1987, as indicated above.

2. The petitioner Smt. Kela Devi after selection by Staff Selection Commission was appointed as temporary Clerk in the Pay and Accounts(ORS) Parachute Regiment Agra on 21-2-1978. The appointment letter among other conditions mentioned that the petitioner had to pass the departmental test in about 3 months time, failing which her services are likely to be terminated. The petitioner passed the departmental test in ~~about 3 months~~ ^{the extended} time and was thus eligible for grant of quasi permanent status. Due to some domestic problems the petitioner

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was on leave off and on for which she was called on to explain as to why ~~the~~ disciplinary action should not be taken against her by memos dated 25-8-82 and 3-11-1982. The petitioner offered her explanation that her absence was due to illness and circumstances beyond her control and also due to visit to Fatehgarh where her young child, husband and family members were residing. However, by an order dated 14-12-82, her services were terminated giving one month's notice. She appealed against this order which was also rejected.

3. It is contended by the petitioner that the order of termination was issued by Joint Controller of Accounts and not by the appointing authority namely, Controller of Defence Accounts and therefore, the order is void. It is further contended that the petitioner has ~~to~~ put in more than 4 years 11 months service, being a regular appointee ^{clerk} as L.D.C. after selection by S.S.C. and having passed departmental test, she acquired the status of a quasi-permanent government servant. There were no charges against the petitioner and her work has not come to adverse ^{Comment to} as such the order of termination without a charge or departmental inquiry and without affording her an opportunity to defend her case is against the principles of natural justice and attracts provisions of Article 311(2). The petitioner further contended that the leave taken by her was either pre-sanctioned or regularised subsequently as admissible under the rules and that her frequent leave could not be a ground for her

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termination. The order of termination is a punishment as such, there could have been disciplinary proceedings instituted against her, thereby the order of termination is vitiated.

4. The case is contested by the respondents who in their counter denied that the order of termination was as a measure of punishment. The termination was after an assessment of over all performance of the petitioner. The probation of the petitioner was extended and the petitioner was not considered for quasi permanent status. Regarding competency of the Officer who passed the impugned order it is stated that Joint Controller of Defence Accounts was duly competent by virtue of delegation of powers issued in notification of Government of India No. 366/C/S/79 dated 20-4-79 (Annexure-CA-2). According to them, the petitioner has not acquired ^{the} as ~~status~~ of quasi permanent employee, since no declaration to this effect was passed by the competent authority. Rule 3 of the Central Civil Service (Temporary Service) Rules, 1965, lays down a qualifying service of more than 3 years continuous service ^a has, requisite for consideration to the status of quasi permanent service and a declaration to that effect by the appointing authority after satisfying about the conduct, character and work of the government servant. There has been no such declaration in the case of the petitioner, as such, she has not acquired the status of quasi permanent government servant. It is also

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stated that the petitioner has not completed her probation satisfactorily though extensions were given in 2 spells of one year each.

5. We have heard the counsel for the parties and perused the record. The contention of the petitioner that the orders were not passed by the competent authority has no merit since the Joint Controller of Accounts was duly delegated the powers of the appointing authority in the amended schedule notified by Government of India (Annexure-CA-2). The only question that remains to be decided is whether the order of termination is an order simpliciter or there is any stigma attached to it.

From the records it is seen that barring notices calling for explanation from the petitioner for frequent spells of leave, there is no other material to suggest her unsuitability, inefficiency in work. In L. Robert

D' souza vs Executive Engineer AIR 1982 SCC 854, the

Supreme Court observed, " Absence without leave is construed, misconduct and it is not open to the employer to terminate the service without ^{notice &} ~~not~~ and inquiry or at any rate without applying the minimum principle of natural justice. "

The impugned termination order is as follows:

" NOTICE OF TERMINATION OF SERVICE ISSUED UNDER RULE 5(I) OF THE CENTRAL SERVICES (TEMPORARY SERVICES) RULES 1965.

In pursuance of sub Rule (i) of Rule 5 of the C.C.S. (Ty. Service) Rules 1965. I.R. Narayanan, JCDA hereby give notice to Smt. Kela Devi, Ty Clerk, A/c No. 8319294 that her services shall stand terminated with effect from the date of expiry of a period of one month from the date on which the ~~text~~ ^{text}

notice is serviced on or as the case may be
tendered to her.

Sd/- R. Narayanan
(R. Narayanan)

Station: Nagpur
Dated: 14-12-1982.

Jt Controller of Defence Accounts
(Signature of the Appointing Authority
CDA(ORS) Central, Nagpur. "

On the face of it, the notice does not suggest any
mis-conduct. Though in the counter the averments of
the respondent is that the termination was after consider-
ing over all performance of the petitioner. It is
also contended in the counter that the explanation
offered for their regular attendance, by the petitioner
was not accepted and that suitable action was taken
against the petitioner. This points out to the ^{fact} effect ~~effect~~
that the frequent leave of the petitioner appears to
be the prime motive for termination. It is not on
the record that explanation of the petitioner was
called for any time for poor quality of work, inefficiency
and unsuitable for the job. In State of U.P. vs. Ram
Chandra Trivedi A.I.R. 1976 SCC 2547, the Supreme
Court held that where there are no express words in the
impugned order itself which ^{thru} through stigma on the govern-
ment servant, the Court would not delve into secretarial
files to discover whether some kind of stigma could be
inferred on such research. A different view, however,
has been expressed by the Supreme Court in a Review
of the case law in regard to the question of probationer
in State of Punjab and another vs. Sukh Raj Bahadur
AIR 1968 SC 1089, the Supreme Court declared that,

"On conspectus of these cases following propositions are clear::

1. The services of a temporary servant or a probationer can be terminated under the Rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.
2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.
3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.
4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.
5. If there be a full-scale departmental enquiry envisaged by Article 311 i.e., an Enquiry Officer is appointed, a chargesheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article. "

It was further observed that it is thus well settled that however, innocuous the order of termination of service may be, if the complaint is that it is by way of penalty, the Court is entitled to, nay, bound to lift the veil and see what the ~~Real~~ real basis of the order is.

6. In Anup Jaiswal vs. Government of India and ^{an} other AIR 1984 SC 636, the Supreme Court laid-down, " the form of the order is not decisive as to whether the order is by way of punishment and that even an ~~an~~ innocuous xx worded order terminating the service may in the facts and circumstances of the case establish that an inquiry into allegations of serious and grave character of mis-conduct involving stigma has been made infraction of the provision of Article 311(2) of the

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Constitution. It is, therefore, now well settled that where the form of the order is merely a camouflage ~~concealment~~ for an order of dismissal or mis-conduct it is always open to the Court ~~to~~ before which the order is challenged to go behind the form and ascertain to see the character of the orders. In S.K. Shisodia vs. Union of India and others ATR 1988 p. 689, a Full Bench of this Tribunal observed, " Even a probationer's service cannot be terminated by way of penalty. But he may be discharged on an assessment of suitability, When the termination can be said to be by way of punishment, and when an assessment of suitability may be difficult to say, but nonetheless one has to determined by the Court".

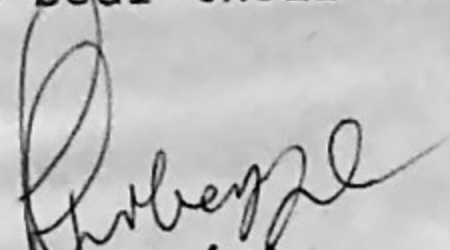
7. In this background of the law on the subject, we have considered the material in the instant case. Rule 5 of Central Civil Services(Temporary Service) Rules, 1965, lays down that the service of the Government servant who is not in quasi permanent service, shall be liable for termination at any time by a notice in writing given either by the government servant to the appointing authority or by the appointing authority to ~~which~~ the government servant. The period of such notice shall be one month. The appointing authority is empowered to terminate the services of a temporary employee. Such termination could be for an ^{un}satisfactory work or the employee being found unsuitable & or for mis-conduct or for failure to acquire eligibility on technical grounds like

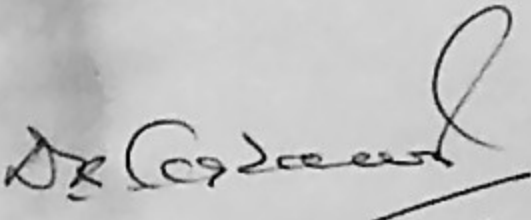
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not passing the departmental test etc. As observed earlier in the instant case there is no material to show that the petitioner was found to be unsuitable. There is averment in the counter that the termination was after taking over all assessment of the performance of the petitioner and it is also mentioned that so far irregular attendance is concerned, punishment was given to the petitioner. No record was shown to us as to what the punishment was, whether any charges were framed? The material before us shows that the explanation of the petitioner was called for on 2 or 3 occasions for her irregular attendance. The record also discloses whatever leave the petitioner had applied for was either pre-sanctioned or was regularised thereafter. In the absence of any other mis-conduct alleged against the petitioner, it should be construed that the order of termination is an order of punishment not related to the quality of her work or suitability of the petitioner to the service. In the circumstances, we hold that the order of termination cannot be sustained as no charge was framed, no explanation was obtained, no disciplinary proceedings were instituted and no opportunity was provided to the petitioner for explaining her case and thus the termination order is in violation of the protection provided to the government servant under Article 311(2) of the Constitution. The termination order, therefore, is quashed. The petitioner is deemed to be

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continuing in service for the purpose of seniority and all other benefits including increments, but she will not be entitled for the salary and allowances for the period for which she has not worked. It is however, open to the respondents to institute disciplinary proceedings and take such action as they deemed necessary in accordance with law. The petition is allowed as above. Parties to bear their costs.


MEMBER (A)


MEMBER (J)

(sns)

July 10, 1990

Allahabad.