

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

T.A.No.1794/87

S.J. Ahmad ::::: Applicant

Vs.

Union of India & Others. ::::: Respondents.

Hon.Mr.Justice U.C.Srivastava, V.C.

Hon.Me.K. Obayya, A.M.

(By Hon.Mr.Justice U.C.Srivastava,V.C.)

This is a transfer application under section 29 of the Administrative Tribunals Act, 1985. The applicant filed a Suit before the Court of Civil Judge, Allahabad, in the year 1983, praying that the order dated 23-11-1981, by which his services were terminated, be declared as illegal, inoperative and without jurisdiction, holding that he is entitled to all the benefits and a decree for a sum of Rs.13,232/- may also be passed in his favour towards the damages caused to him on account of wrong termination of his services.

2. The applicant was appointed as a Driver, in Bidi Workers Welfare Organisation, Government of India, on 16-4-1979 on temporary basis and was posted under the Medical Officer-in-charge, Mobile Medical Unit, Amroha, District Moradabad. Vide order No.128 of 1981, he was allowed to continue as such and since then he was continuing as a temporary employee. Subsequently the applicant was transferred to District Madhubani in North Bihar, where he joined on 24-4-1980. Ever since the defendant No.2 came as a Medical Officer in March, 1981 and the applicant was attached to him, the applicant made certain complaints

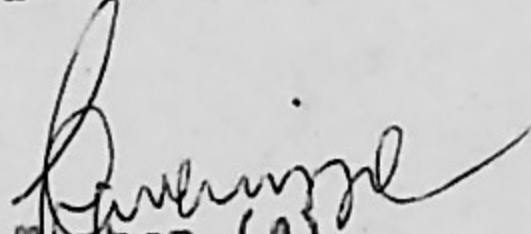
against the said Medical Officer to the Superior Authorities, and according to the applicant it is because of his complaints against the said officer his leave was also not granted, and the applicant proceeded on leave and extended his leave, and when he was on leave his services were terminated and he has learned that because of some alleged mis-conduct his services were terminated. The order has been passed under Rule 5 of Temporary Central Civil Service Rule.

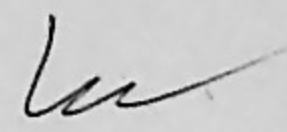
3. The respondents in their reply denied the allegation of any malafide intention of Medical Officer against the applicant. According to them the applicant was appointed only as a temporary staff as a stop gap arrangement and he was informed that his appointment is only on temporary basis and his services can be terminated at any time without assigning any reasons. He was never made permanent. Only he was approved by the Selection Committee on 10-3-90. He applied for 2 days C.L. and thereafter the Medical Officer received telegram through which he extended his leave and he remained absent for few more days without giving any information. The then Medical Officer also reported of his dissatisfaction with the performance of the applicant. A letter was issued to him on 22-11-1979 requiring him to explain, but he failed to give explanation. On 20-12-79 he has gone out in the field for mobile duty. He drove the vehicle in such a defective manner that the vehicle turned turtle twice on the same day. A report in this regard was also made. Thereafter the applicant was directed to explain his behaviour and he tendered apology. The applicant again badly damaged a vehicle in November, 1980 and he was called to explain his misconduct but he did not give any satisfactory reply. On 13-2-81 he absented himself and after giving C.L. application on 17-2-81 he proceeded without intimating the Medical Officer. He did not resume

duties upto 20-2-81 and left even without handing-over the keys of the Vehicle and the Government ^{work} has suffered badly again. He was again directed to give explanation and his explanation was not correct. His absence was also regularised and he was told that it was being done only on humanitarian grounds. Even though a number of opportunities were given, he could not improve his performance. Finding that the applicant is not suitable and did not improve his performance, his services were terminated as a temporary Government Servant. Thus according to the respondents it is not by way of punishment for his mis-conduct, but because ~~of~~ his suitability was adjudged, which was found to be far below mark, ^{and} his services were terminated. After the assessment of his work, he was warned from time to time and a number of opportunities were given to him to improve but he could not improve.

3. On behalf of the applicant the termination has been questioned on the ground that his juniors have been retained, but his services have been terminated. The past history indicates that it may be because of the misconduct his service were terminated. According to the respondents, it is not because of his misconduct, but it is because of his poor performance and his lack of aptitude to perform the duty the suitability was adjudged. On behalf of the respondents reference was made to the decision in the case of State of U.P. Vs. K.K. Shukla (1991 S.C. (L & S) 587) wherein it has been held that even if there were charges of misconduct and the services have been terminated on the ground of unsatisfactory performance, services can be terminated on the ground of unsatisfactory performance, and the aid of Article 14 and 16 of the Constitution of India cannot be taken.

4. The respondents stated that there were series of reports of dissatisfaction regarding the performance of his work. The allegation of malafides of the Medical Officer against the applicant has been denied. It may be true that certain photographs were taken, but it cannot be said that as a result of some malafide intention, action has been taken. The respondents have denied that the impugned order was passed on the basis of alleged mis-conduct. It is on the basis of the assessment of over-all performance of duties his services have been terminated. Even if something in between has happened it cannot be said that due to misconduct his services have been terminated. As such no case of mis-conduct has been made out and the plea that because of some misconduct, his services have been terminated, fails in these circumstances. Accordingly this application has got no merit and the same is dismissed. No order as to the costs.


Member (A)


Vice-Chairman.

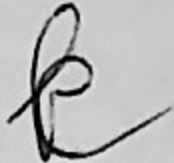
Dated: 22nd March, 1993, Allahabad.

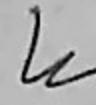
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22/3/93 Hon.Mr.Justice U.C.Srivastava, V.C.
Hon.Mr. K. Obayya. A.M.

The case is disposed of after hearing
the Counsels for the parties since the
pleadings are complete. Judgement has
been dictated in the open Court.


A.M.


V.C.