

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated : Allahabad this 6th day of May, 1996

CORAM: Hon'ble Dr. R.K.Saxena, Member (J)
Hon'ble Mr S.Dayal, Member (A)

ORIGINAL APPLICATION NO. 435 OF 1988

Anil Kumar Chaturvedi aged about 26
years son of Sri Munni Lal Chaturvedi,
resident of 8/154, Bhairo Bazar, Belanganj,
Agra

- Petitioner

(By Advocate Sri A.K.Sinha)

Versus

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

2. The Director,
Aerial Delivery Research & Development
Establishment, P.O. Box No. 51,
Station Road, Agra Cantt. - 282001

3. Director General , R & D Organisation,
New Delhi

- Respondents

(By Advocate Sri N.B.Singh)

ORDER

(By Hon'ble Mr S.Dayal, Member (A))

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The applicant seeks the following reliefs:

1. (i) Setting aside the order of termination of service dated 11.9.87 and order on representation of 16.9.87 passed on 25.5.88.

(ii) Award of cost of the application.

2. The brief facts of the case narrated in the application are that the applicant was a handicapped candidate, who was appointed as a Messenger in the pay scale of Rs. 196-3-220-E.B.-3-282 in Aerial Delivery Research and Development Establishment, Agra. The appointment was made on 21.12.83 after interview on 4.10.83. The applicant was placed on probation for two years with effect from 22.12.83 and the period of probation came to an end on 21.12.85. He acquired a lien on this post on 22.12.85 and became confirmed on the post. However, an order for extension was passed on 16.6.86 extending probation upto 21.12.86. The probation was extended upto, 30-9.87 by an order dated 3.4.87. The order of termination of service was passed on 11.9.87 and the applicant was given a month's salary. It is admitted that the applicant was informed on 8.8.85 that his services were not satisfactory. He was informed on his making a representation on 22.8.85 that the letter was given to improve performance and charges in the letter could not be withdrawn. His representation dated 16.9.87 stood rejected when he enquired personally on 9.10.87.

3. The grounds on which relief is sought are that the order of termination was illegal because it was an order of punishment in the garb of termination without ^{undertaking} proceedings under Article 311(2) that it was discriminatory because his juniors were retained, that the order was arbitrary and malicious because the applicant requested for transfer to escape personal work taken by Group Captain, Sri T.G. Dhere, that the order was not a speaking order, that the applicant had become quasi-permanent after completion of three years of service and was not temporary on the date of termination simplicitor.

4. The arguments of Sri A.K. Sinha, Counsel for applicant and Sri N.B. Singh, Counsel for Respondent were heard.

5. Before we address the issues raised by the applicant in the last paragraph, it is necessary to know whether the applicant was on probation at the time of termination of his service or not. The applicant had mentioned in the application that the period of probation came to an end immediately on

completion of two years on 21.12.85 after which he acquired a lien on the post of Messenger and became confirmed on that post. The Respondent's stand is that the petitioner was appointed on a temporary post and that the period of probation was extended from time to time. Since his probation was extended he did not become quasi-permanent. In this connection the applicant was given a report about his performance on probation. He was informed that his performance was not satisfactory and that inspite of oral advice there was no improvement in his performance. He was informed that if there was no improvement in his performance, his service can be terminated without any notice. This report was given on 18.8.85 which was within period of probation. By an other report dated 10.6.86 his probation was extended from 22.12.85 to 21.12.86 and he was again informed that he had not given up his habit of coming late and had not improved his performance. Thereafter by another report dated 3.4.87 his probation was further extended upto 30.9.87. The termination of the applicant's service was made on 11.9.87 under Sub-Rule I (Rule 5) of the Central Civil Service (Temporary Service) Rule 1965. He was also given one month's pay by way of notice. The order of appointment shows that the applicant was appointed on temporary post as per terms of his appointment letter dated 12.8.83, and clause 'B' of his appointment order mentioned that the services of applicant could be terminated at any time by giving one month's notice after the expiry of the probationary period. Thus by virtue of both position viz. of probation and of temporary appointment the services of the applicant could be terminated without necessitating the carrying out of a departmental enquiry for lapses in the applicant's performance. His work and conduct ~~was~~ found to be not satisfactory over a period of time and he was given due notice to improve them but the respondents found no improvement in his conduct and performance.

6. The contention of the applicant made in his pleadings that his conduct was satisfactory because he was given overtime work, increments when due and other allowances cannot be accepted. Overtime work, normal increments and allowances are not related to conduct and performance of the applicant over a period of time.

7. The applicant's contention that there was no provision to extend the period of probation with retrospective effect can also not be accepted. It is a settle law that the period of probation continues till it is brought to an end by an order of satisfactory completion of probation. In the case of the applicant such an order had not been passed. On the other hand the applicant was warned about his unsatisfactory performance

and conduct and his probation was extended twice for a period of nearly one year and ten months which was less than the period of his probation which was two years. The extension of probation can only be done after completion of the duration of probation and assessment of the performance of a probationer during his period of probation. Hence, the orders of extension passed by the Respondents were legal and valid.

8. It is clear from the order of termination that the service of the applicant were terminated because he was on probation as a temporary employee. In case of such an employee the services can be terminated without giving any opportunity as contemplated under Article 311(2) of the Constitution, if the competent authority comes to such a conclusion based on objective assessment of desirability of continuing of services of the applicant in public interest. In this case the conduct and performance of the applicant was found un-satisfactory during the 5th and 6th quarter of his probation and he was duly informed about it in order to make him to take efforts to improve the performance. His period of probation was extended in June 1986 and in April 1987 on the same ground. Therefore, there was sufficient ground to show that the applicant was ^{extended} on probation ~~as~~ for unsatisfactory performance ^{as} a temporary employee whose services were terminated in public interest.

9. The contention of the applicant that his juniors were retained while his services were terminated and, therefore the order was discriminatory cannot be accepted. It is not the case of the applicant that he as well as his juniors named by him had all been found to be wanting in conduct and performance of their duties. It was only the applicant, who was found wanting and, therefore, passing of termination order in his case was perfectly justified.

10. The applicant has also raised the ground of malice, it is on record that the applicant asked for transfer from the group in which he was working on 15.12.1986. However, by then the applicant's performance was already found wanting once in 1985 and again in 1986. Besides, the applicant has not mentioned the period during which he worked under directorship of Sri T.C. Dhare against whom he alleges malice. The order of termination was passed on 11.9.87 by Sri M. Salauddin, who was Director at that time. Therefore, mere suggestion of malice on the part of an Officer under whom the applicant had worked in the past cannot be accepted as a sufficient ground to show that the order of termination was arbitrary.

11. The applicant has cited case of Pradeep Deo Versus Director of Census Operation Anuranchal Pradesh, Shillong (1987) 2 ATC 750. The ratio of this case is that the service of an temporary Govt. Employee can be dispensed with if no stigma is cast against the Govt. Servant in the order of termination. It is not known how the applicant seeks to apply this judgement because order dated 11.9.87 terminating service of the applicant does not cast any stigma. Perhaps the applicant seeks to obtain advantage of the other ratios in this case which is that if the Govt. servant was asked to submit his explanation in respect of allegation of misconduct, the authority has to consider his explanation before passing any order. It is also stipulated in this case that if the juniors are retained Article 14 and 16 of the Constitution of India will be attracted. In the present case the explanation of Govt. servant in respect of his unsatisfactory service was examined and was not found to be satisfactory and the order of termination simplicitor was subsequently passed. Therefore, the second ratio of the case too does not apply. As regards the third ratio the Apex. court has laid down in State of U.P. Vs. Kaushal Kishore Shukla (1991) 1 SCC 691 that if a temporary employee is not considered fit for further continuance of service and his services are terminated even if his juniors are retained would not give him a ground for alleging discrimination and claiming protection of Article 14 and 16. Hence the applicant does not get any advantage of the case cited. Another case cited of Rajendra Prasad Shukla Vs U.O.I. and Ors. 1988 (8) ATC 880 also lays down that if order casts stigma and departmental enquiry is not conducted, termination simplicitor would be bad in law, as we have already seen in the analysis of the last case cited by the applicant, this stipulation is not applicable to the case before us because order of termination casts no stigma.

In the third case cited by the applicant of Khazan Singh Vs U.O.I. and Ors 1993 (25) ATC 769., it is also held that reasonable opportunity was to be given if termination is punitive or order casts any stigma but it also lays down that if termination was on the ground of un-suitability, rules of natural justice will not be applicable. As we have seen, there is no stigma or expression of any intention to punish the applicant in the body of the order of termination, the applicant, therefore, gets no advantage of the judgement cited by him.

12. In the result the application fails and is dismissed. There shall be no order as to costs.

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MEMBER (A)

D. D. Dabney
MEMBER (J)

R.J