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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 7th day of August 1997.

Original Application no. 1595 of 1992.

CORAM : Hon'ble Mr. R.K. Saxena, J.M.

Hon'ble Mr. D.S. Baweja, A.M.

Surya Kant Kainthola, S/o Shri V.D. Kainthola,

Lower Divisional Clerk, ,

Lal Bahadur Shastri National Academy of
Administration, Mussoorie.

(By Advocate Shri S.S. Nigam).... Applicant.

Versus

1. Union of India through Ministry of Personnel,
Public Grievances and Pension, Department
of Personnel and Training.

2. Lal Bahadur Shastri National Academy of
Administration, Mussoorie, through its
Directors.

.... Respondents.

(By Advocate Shri Satish Chaturvedi)

O R D E R (RESERVED)

Hon'ble Mr. D.S. Baweja, A.M.

1. Through this application, prayer has been
made for quashing of orders dated 26.10.1992 and
16.11.1992 terminating the services of the applicant
and to regularise the services of the applicant.

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2. The applicant was appointed as Lower Divisional Clerk (L.D.C) on 30.9.1988 after being selected by Staff Selection Commission in Lal Bahadur Shastri National Academy of Administration. However, the services of the applicant have been terminated as per letter dated 26.10.1992. Feeling aggrieved by the same, this application has been filed on 4.11.1992.

3. The applicant has put up the following defence in support of his case.

- i) Those who were appointed subsequent to the applicant and junior have been confirmed in service while the services of the applicant have been terminated. This is arbitrary and discriminatory action.
- ii) No reasons for termination of services have been disclosed.
- iii) No opportunity of hearing has been given before passing the impugned order and as such it is in violation of principles of natural justice.
- iv) Relying on the terms of conditions of the appointment letter is wholly arbitrary and illegal. It is settled law that a persons once appointed will be governed by terms of contract of service.

3. The applicant made a representation against the termination order and the same had been rejected vide order dated 16.11.1992. This order has ~~also~~ been also impugned for quashing through an amendment application.

4. The respondents have apposed the application by filing counter reply. The respondents have submitted that the applicant was appointed on probation. His work and performance was not found satisfactory and his probation period was extended from time to time and last was extended upto 16.10.1992. The case of the applicant was considered for regularisation by the Departmental Promotion Committee and he was not found fit. The services of the applicant were accordingly terminated under proviso of sub rule (i) of Rule 5 of Central Civil Services (Temporary Services) Rules, 1965. As regards the confirmation of the juniors, the respondents contend that they were regularised based on the satisfactory performance. In view of this, the plea of discrimination taken by the applicant is not tenable. The respondents, therefore, assert that the application is devoid of merit and deserves to be dismissed.

5. The applicant in the rejoinder reply has controverted the contentions of the respondents. The applicant has reaffirmed the grounds taken in the application in support of his claim.

6. We have heard Shri S.S. Nigam, the learned counsel of the applicant. None appeared on behalf of the respondents. There was no request for adjournment from the counsel for the respondents. In view

of this, we proceeded to hear the case in the absence of the counsel of the respondents.

7. The short question involved in the case is whether the termination of services of the applicant by the impugned order is legally sustainable. It is admitted fact that the applicant was appointed on 30.9.1988 on temporary basis on probation as per the terms and conditions set out in the letter dated 30.9.1988 (A-2). The applicant contends that his performance had been satisfactory but he has been discriminated whereby the juniors have been regularised and the applicant's services have been terminated without indicating the reasons for the same and without any show cause notice. On careful consideration of the material brought on record by the respondents in support of the reasons for termination of services, we are not inclined to subscribe to the contentions of the applicant. The applicant joined in service on 30.9.1988. The letter at OA-3 of the Counter-reply shows that the probation of the applicant was extended last upto 16.10.1992. This covers period of more than four years and we presume that the probation period was being extended from time to time. The letter also brings out that period of probation was extended on account of unsatisfactory work and conduct. The documents at OA-1 and OA-2 of the Counter-reply are also indicative of his unsatisfactory performance. In face of these facts, applicant's refutation of the fact that his performance was not satisfactory during period of probation in the rejoinder reply is not tenable. It is established beyond doubt that the performance of the applicant was not

satisfactory and his probation period was being extended. The respondents have averred that the case of the applicant for regularisation was considered by Departmental Promotion Committee and the same did not consider him fit based on the overall performance and accordingly the services of the applicant have been terminated as per the extant rules. We have gone through the termination order dated 20.10.1992 issued under Rule 5(1)(a) of CCS (Temporary Services) Rules. We find that this is an order of termination simpliciter without attacking stigma against the applicant. Since the work of the applicant was not satisfactory during the period of probation even after giving him the opportunity to improve by extending the period of probation, the termination order cannot be held arbitrary and in violation of the extant service rules and terms in the letter of appointment. In this connection we refer to the following judgements of the Apex Court wherein it is held that there is no illegality in terminating services for unsatisfactory performance during the period of probation.

i) Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. 1997 SCC (L&S) 558.

ii) State of Orissa and others Vs. Jyoti Ranjan Kar 1996 SCC (L&S) 220.

iii) Hukam Chand Khundi Vs. Chandigarh Administration 1996 SCC (L&S) 49.

It will be appropriate to reproduce an extract from

para 5 of the judgement in case of Kunwar Arun Kumar , where their Lordships of the Hon'ble Supreme Court have held as under :-

"..... During the period of probation, the authorities are entitled to assess the suitability of the candidates and if it is found that the candidate is not suitable to remain in service , they are entitled to record a finding of unsatisfactory performance of work and duties during the period of probation. Under these circumstances, necessarily the appointing authority has to look into the performance of work and duties during the period of probation and if they record a finding that during that probation period the work and performance of the duties were unsatisfactory, they are entitled to terminate the service in terms of letter of appointment without conducting any enquiry. That does not amount to any stigma. If the record does not support such a conclusion reached by the authorities a different complexion would arise....." . In view of what is held by the Apex Court. We do not find any illegality in the action taken by the respondents.

8. The thrust of the arguments of the applicant in the original application is that he has been discriminated by regularising the services of the juniors who were appointed subsequently and were also placed on probation. The respondents have submitted that the services of the juniors have been regularised based on the satisfactory completion of the period of probation. In view of this position and the reasons for terminating of the services of the applicant does not survive. If the services of the temporary government servant

during probation are terminated on the ground of unsatisfactory performance, in accordance with the condition of service, then such a government servant forms a class apart from other temporary servants who may be junior to him and retained in service for satisfactory performance. Under such a situation, the question of discrimination does not arise.

9. The other grounds that no reasons for termination of services have been disclosed and no opportunity of hearing has been afforded do not have any force and substance in view of what is discussed above. The applicant was aware of his unsatisfactory performance and period of probation was being extended. As such we do not find any case for denial of principles of natural justice made out by the applicant.

10. In consideration of the above deliberations, we are unable to find any infirmity and illegality in the impugned termination order and order dated 16.11.92 and hence the application is devoid of merit. The application is accordingly dismissed with no order as to costs.

Sd/

Sd/

MEMBER (A)

MEMBER (J)

AM/