

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

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Allahabad : Dated this 22nd day of December, 1999

Original Application No.1630 of 1992

District : Allahabad

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. S.K.I. Naqvi, J.M.

Bahauddin Qidwai,
S/o Sri Samiuddin
R/o 27, Kanpur Road,
Allahabad

(Sri Nazar Bokhari, Advocate)

. Applicant

Versus

1. Union of India
Through Secretary Ministry of Health,
New Delhi.
2. Deputy Assistant Director
Central Government Health Scheme,
Allahabad.
3. Deputy Director Central Government,
Health Scheme, Allahabad.

(Sri Amit Sthalekar, Advocate)

. Respondents

O R D E R (Oral)

By Hon'ble Mr. S. Dayal, A.M.

This application has been filed for setting aside
of termination order dated 23-3-1974 and grant of consequential
benefits to the applicant for the period since termination to
reinstatement of the applicant with all consequential
benefits. The facts as stated by the applicant are that the
applicant was appointed as Pharmacist under the Central
Government Health Scheme, Allahabad by appointment order
dated 20-5-1968 initially for a period of two years on
probation. The order of appointment also contains a clause
regarding termination at any time by a month's notice given

by either side. The services of the applicant were terminated on 23-3-1974. This termination order has been challenged by the applicant.

2. The argument of Sri Nazar Bukhari, learned counsel for the applicant and Sri Amit Sthalekar, counsel for the respondents have been heard.

3. Learned counsel for the applicant mentions that the petitioner filed a suit no.1999 of 1974 and obtained a temporary injunction. The suit no.199/1974 was withdrawn on 23-5-1975 when a notice under Section 80 C.P.C. was raised by the defendant and, therefore, the suit no.349 of 1975 was filed on the same day i.e. 23-5-1975. In the suit the defendants were restrained from terminating the services of the plaintiff by the order dated 23-5-1975. The applicant continued to work till 29-5-1975 when he was asked not come to the Dispensary as his services were not required from 16-5-1975. The applicant claims that the order dated 23-5-1975 was not served on him. The temporary injunction application of the petitioner was rejected on 19-1-1976 against which the applicant filed a civil appeal which was rejected by the District Judge on 30-3-1976. The applicant was represented by the counsel Sri S.D. Dwivedi, in the District Court. Sri S.K. Dwivedi fell ill and had stopped going to the Court and the case of the applicant was rejected in the absence of the counsel for the applicant in the year 1978. Thereafter the applicant was advised by his well wishers to file a writ petition. Thereafter the applicant approached his counsel Sri Shafiq Mirza, at Lucknow, who assured the applicant that every possible pairvi was being done. However, subsequently in April, 1992, the applicant was advised by his counsel to file a petition in the Central Administrative Tribunal as the High Court had no jurisdiction.

4. Learned counsel for the respondents has contested the claim of the applicant ^{on the ground} that the application is time barred. Learned counsel for the respondents has drawn our attention to Section 21(2) of the Administrative Tribunal Act, 1985 in which it is laid down that if the grievance in respect of which an application is made has arisen by reason of any order made at any time during the period of three years immediately preceding the date of which jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates. This claim of the learned counsel for the respondents is valid. Agitating the claim which arose nearly a decade and half is indeed a stale claim. Learned counsel for the applicant has sought to rely upon the judgement of the Apex Court in State of Haryana Vs. Chandramani and Ors in regard to limitation. He has invited attention to Para 7 and Para 11 of this judgement of the Apex Court which has been reported in 1986 ACJ Page 843, following the rule in OP Kathuwalia Vs. Lakhmira Singh 1984(1) SCC 66. Another ruling mentioned there is that of Collector Land Acquisition, Anantnag & Anr Vs. Katijā (1987) 2 SCC 107 wherein it has been laid down that in considering limitation a rational common sense pragmatic manner should guide the court. The court should decide in favour of substantive justice ^{the same} and technical consideration ^{are} pitted against each other. However, the Apex Court has ruled that the delay should be condoned in this case. The rule relied upon by the applicant while relying upon the aforesaid ruling lays down ^{that} the court should decide the case on merit unless there is no merit. This rule has been given in a case where the petitioner was the State Government and it has been held that delay of 109 days had been explained and, therefore, it was a fit case for condonation of delay. The ratio of this cannot be applied to the case before us because the delay ^{is} of about

14 years and odd ^{which} cannot be taken to be non-deliberate.

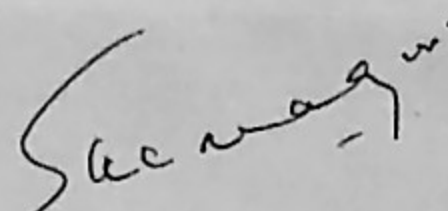
4. Learned counsel for the applicant has mentioned that because the applicant has completed about two years and since the order of appointment lays down only a period of two years for probation he should ^{have} stood confirmed on completion of two years of this period. He in this connection places reliance on a judgement of Allahabad High Court in Rakesh Kumar Vs. SSP Saharanpur & Ors, reported in 1999(1) AWC 313. The ratio of this case is that where the period of probation is fixed and cannot be extended or where the authority can either retain the applicant by confirming him after probation or terminate his services and do not chose to terminate service, the presumption would be that the applicant has been confirmed after the expiry of the probation. This case relates to Regulation 541 of the U.P. Police Regulation, which lays down that the regard would be on probation from the date he begins to officiate in a clear vacancy which shall be of two years except that those recruited directly in Criminal Investigation Department or District Intelligence Staff will be on probation for three years and those transferred to the Mounted Police will be governed by the directions in Para 84 of the Police Regulations. If at the end of the period of probation the conduct and work of the recruit have been satisfactory ^{and} he had been approved by the Dy Inspector General of Police for service in the force, the Superintendent of Police can confirm him in his appointment. However, if the Superintendent of Police is of the opinion that the recruit is not likely to become good Police Officer, he may dispense with his services. In this case the recruit was to be supplied with specific complaints and grounds and allowed an opportunity to show cause. In the case before us the only document we have is the order of appointment which


has been annexed as Annexure-1 in which the terms of appointment including probation for a period of two years from the date of appointment is indicated. The Recruitment Rules on which the terms are based have not been produced. The respondents have shown in their counter reply that the applicant was found to be habitual late comer and frequently absented himself from duty in regard to which Memo. dated 14-5-1970 and 6-7-1970 were issued to the applicant. The applicant has also been informed of a warning ^{/given} on 23-7-1970. It has also been stated that the work of the applicant has not been satisfactory and there is also complaint received in the office that the applicant is pilfering medicines which was admitted by the applicant in his written statement signed by him on 7-2-1992. Therefore, the applicant cannot be deemed to have been confirmed on completion of the period of two years. Issuance of memos for frequent absences has also been mentioned. Hence, the services of the applicant were terminated under CCS(Temporary Servants) Rules, 1965. In the light of the fact brought out in the counter reply and in the absence of Recruitment Rules, which would show whether the authority relied upon by the learned counsel for the applicant in Rakesh Kumar vs. SSP Saharanpur (Supra) will be applicable to this case, this contention of the learned counsel for the applicant that there was deemed confirmation, cannot be accepted.

5. The last contention of the learned counsel for the applicant is that the services were terminated on the ground that the applicant had committed a case of misconduct. Since the foundation of the order of termination is the act of misconduct and the services of the applicant cannot be terminated without giving him opportunity to show as to why his services should not be terminated. The facts revealed in the counter reply show that the pilferage/theft

being only one of the grounds on the basis of which the order of termination was passed. It was not the sole ground. The main reason why the applicant was terminated is unsatisfactory performance during the period of service.

6. Thus, on merit as well as on count of limitations, we find that the application has no merit and is dismissed accordingly, with no order as to costs.


Member (J)


Member (A)

Dube/