

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 539 of 1992

Allahabad this the 13th day of October 1998

Hon'ble Mr. S. Dayal, Member(A)
Hon'ble Mr. S.K. Agrawal, Member(J)

Kailash Chandra Agarwal, S/p Shri Rameshwar Dayal
Agarwal, aged about 26 years, R/o Near Kumar Coaching,
Sahukara Mathia, Bareilly.

Applicant

By Advocates Dr.R.G. Padia
Sri P. Padia
Sri A.K. Dawe

Versus

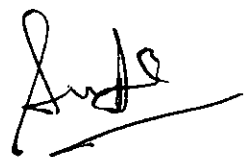
1. Union of India through the Director General,
National Informatics Centre, Headquarter, A Block
CGO Complex, Lodi Road, New Delhi.
2. The Director Technical, NIC, Headquarter,
New Delhi.

Respondents

By Advocate Sri N.E. Singh

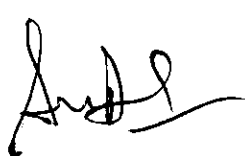
O R D E R

By Hon'ble Mr. S.K. Agrawal, Member (J)

 In this O.A. the applicant makes a prayer
that order dated 26.9.90 may be set aside as it is
illegal, void and inoperative and the applicant may
be treated to be continue in service with all consequen-
tial benefits.

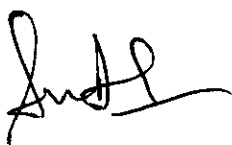
2. In brief the facts of the case as stated

by the applicant are that the applicant was appointed by the Director General, National Informatics Centre (for short N.I.C.), New Delhi vide letter dated 08.9.88 as Scientific Technical Assistant after selection by the Selection Committee in the pay scale of Rs.1400-2600. The applicant joined his services in pursuance to that order on 23.9.88. It was stated by the applicant that he was never informed of any commission or commission or lapses on his part till 07.9.90. On 07.9.90, Joint Director - Mr.K.G. Nair issued a memorandum alleging therein that the work of the applicant has been found unsatisfactory and also he has been found neglecting his work and his performance was also deficient in quality. His behaviour with his superiors also left much to be desired as such the probation period which expired on 23.9.89, is extended upto 30.9.90, with the stipulation that during the extended period of probation, his work and conduct be carefully watched and final decision regarding his suitability for retention in the service will be taken on that basis. It is submitted that period of probation of the applicant was extended upto 30.9.90 with a view to victimise in a colourable exercising the power, in an arbitrary manner and the extension of probation which expired on 23.9.89 is itself misuse of power. It is stated that services of the petitioner were terminated vide letter dated 26.9.90 which is altogether illegal, void and inoperative. The applicant made an appeal dated 22.3.91 but the appeal has not been decided although period of more than six months has passed. Therefore, the applicant by this O.A. requested this Tribunal that order dated 26.9.90 may be set aside and quashed and applicant be



treated to continue in service with all consequential benefits.

3. The counter-affidavit was filed. In the counter, the appointment of the applicant vide order dated 08.9.88 and joining of the applicant in pursuance of that order on 23.9.88 was admitted. It was also stated that the applicant was placed under probation for a period of one year in the first instance and he was posted at N.I.C. , District Centre, Kanpur (Rural). It is stated in the counter, that on the assessment of his work and conduct during the first year, it was found necessary to watch his performance further by giving him an alternative posting away from his home town and extend his probation upto September, 1990. Therefore, he was transferred from N.I.C. District Centre Kanpur (Rural) to Uttar Kashi in February, 1990 and his performance was being watched with a view to ascertain his suitability for retention in service. On the basis of the over all performance during this period, the applicant was not found suitable for retention in service and in terms of para-1(b) of the offer of appointment dated 08.9.88 to him, his services as probationer were terminated with effect from 30.9.90 vide order dated 26.9.90. It is also stated that prior approval of the Additional Secretary and the Director General, N.I.C. who has initially appointed the applicant to the post of Scientific/ Technical Assistant 'A' (District Informatics Assistant) vide office order dated 03.10.88 was also obtained on the relevant file before the order dated 26.9.90 , terminating the services of the applicant as probationer, was passed. It is also stated that before



taking a final decision on his suitability for retention of the services of the applicant, the performance was reviewed by the Review Committee and on the basis of the recommendation of the Review Committee, the appointing authority, namely Additional Secretary to the Government of India and Director General, N.I.C., decided to terminate the services of the applicant as probationer in accordance with the terms and conditions of the offer of appointment - letter dated 08.9.88. In the counter, it is denied that services of the applicant were terminated in colourable exercise of powers rather it was stated that services of the applicant were terminated strictly in accordance with the terms and conditions of his appointment on probation. The applicant after terminating the services again applied for the same post - Scientific/Technical Assistant (A) in N.I.C. UP State Unit in response to open advertisement. His application was duly considered alongwith other applications and the applicant was also permitted to appear. The written test held on 16.2.92 but the applicant did not qualify in the written test held on 16.2.92, therefore, terminating the services of the petitioner was not a stigma. The order dated 07.9.90 extending the probation of the applicant was issued after pointing out the deficiencies in his work and conduct as per the terms of the offer of appointment on probation. There were certain complaints regarding the way of functioning of the applicant at Uttar Kashi as District Informations Assistant received from various quarters were being investigated. Therefore, it is wrong to say that extending the probation of the

applicant upto September 30, 1990 was decided on the basis of the meeting of the immediate superior of the applicant with the officer in the office of the Director General, N.I.C. in September, 1990. The work and performance of the applicant was assessed on the basis of the performance report for the initial period of one year furnished by his controlling officer and it was found that performance of the applicant was found not satisfactory, therefore, his probation was extended upto September 30, 1990, in accordance with the terms of his appointment order. It is also denied that the termination of the services of the applicant from 30.9.90 vide order dated 26.9.90 is illegal, void and inoperative. This order is not a stigma. The order of termination is an order simplicitor. It is also stated that prior approval of the appointing authority in the case of the applicant was obtained on relevant file for terminating the services of the applicant as probationer and only thereafter, the order dated 26.9.90, terminating his services, was issued. In this way, on the basis of the counter affidavit filed by the respondents, it was requested that the O.A. be dismissed with costs.

4. The rejoinder-affidavit was filed, in which the facts stated in the O.A. were reiterated, and stressed on the point that services of the applicant was terminated illegally, arbitrarily and without any basis, which is liable to be quashed.

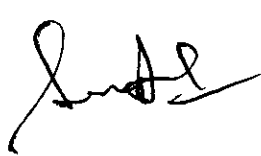
5. Learned lawyer for the applicant has vehemently argued that the order of termination of the applicant has been issued without offering an

opportunity of producing the defence by the applicant and the impugned order of termination was issued by the authority lower than the appointing authority, therefore, the impugned order is in violation of Article 311 of the Constitution of India.

6. On the other hand, learned lawyer for the respondents while objecting the above arguments submitted that the applicant was on probation and if the work and conduct of the applicant is not satisfactory during the probation period, his services can be terminated without any notice. The impugned order of termination is order of termination simplicitor. It is also argued that before terminating the services of the applicant, prior approval of the Additional Secretary to the Govt. of India and Director General who is the appointing authority, was obtained which is on the file. The performance of the applicant during the probation period was also reviewed by a Review Committee and on the basis of the recommendation of the Review Committee, the impugned order of termination was issued.

7. We gave thoughtful consideration to the rival contention of both the parties and perused the whole record.

8. It is not disputed that the applicant was appointed by the Director General, N.I.C. vide its order dated 08/9/88 and was placed on probation for one year which may be extended at the discretion of the competent authority. It is also not disputed that period of probation of the applicant was extended



upto 30.9.90 vide order dated 07/9/90. The work and conduct of the applicant was found unsatisfactory during the period of probation is clear from the order of extension dated 07/9/90 and the report of Review Committee prepared for this purpose.

9. In 'Parshotam Lal Dhingra Vs. Union of India
Reported in A.I.R. 1958 S.C. 36' which is recorded as Magna Carta of the Indian Civil Service. Their Lordships have been pleased to observe as follows:-

"An appointment to a permanent post in Government service on probation means as in the case of a person appointed by a private employer that the servant so appointed is taken on trial. The period of probation may in some cases be for a fixed period e.g., for six months or for one year or it may be expressed simply as 'on probation' without any specification of any period. Such an employment on probation under the ordinary law of master and servant comes to an end if during or at the end of the probation the servant so appointed on trial is found unsuitable and his service is terminated by a notice."

10. The status of a probationer is again come for consideration before the Hon'ble Supreme Court in Oil and Natural Gas Company Vs. Dr. MD, S. Iskander Ali
Reported in A.I.R. 1980 S.C. 1242 ', in which it was held that a probationer had no right to the service. Further at paragraph-7 of the judgement, their Lordships have been pleased to observe as follows:-

" It is obvious that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. The remarks in the assessment roll merely indicate the nature of the performance put in by the officer for the limited purpose of determining whether or

not his probation should be extended. These remarks were not intended to cast any stigma."

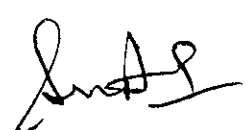
11. In the case of Shamersingh Vs. State of Punjab reported in A.I.R. 1974 S.C. 2192, it was held by the Hon'ble Supreme Court that before the probationer was confirmed, the authority concerned was under obligation to consider whether the work of the probationer was satisfactory or whether he was suitable for the post.

12. In High Court of Judicature at Patna Vs. Pandey Madan Mohan Prasad Sinha and Others reported in 1997 S.C.C. (185) 1703 (II); 1997 10 S.C.C. 409. Their Lordships of the Hon'ble Supreme Court have been pleased to observe as follows;-

"There is no obligation to communicate the adverse remarks to the petitioner before taking decision to terminate his services on the basis of the adverse material. But uncommunicated adverse material can be taken into consideration for assessment of suitability of the probationer and forming decision to terminate his services

13. On the basis of the above legal position, it is clear that a probationer has no right to the post or service. To keep a person on probation means that the employer should judge the performance and to take decision about the suitability of the petitioner.

14. In the ^{instant} case, the probation of the applicant was found unsatisfactory. There were so many complaints against him. The report of Review Committee was also showing that performance of the applicant was not satisfactory, therefore, the probation of the applicant



was extended and on the basis of the Review Committee report, ultimately, the services of the applicant were terminated by the impugned order.

15. In 'Shri Om Shanker Misra Vs. Union of India and Ors. S.L.J.1997(2) C.A.E.355(O.A.314/92 decided on 08.3.96', it was held that services during the probation can be terminated by order simplicitor and a probationer does not hold any civil post. It is also held that Article 311 does not apply to a probationer.

16. As regard the other contention of the learned lawyer for the applicant, Article 311(1) of the Constitution of India, reads as under:-


"No person who is a member of Civil Service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

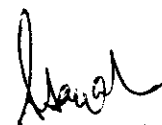
17. In the instant case, the necessary approval of the Director General, N.I.C. and Additional Secretary to the Govt. of India was obtained on the file, which is not disputed. In 'HukamChand Khundia Vs. Chandigarh Administration and Others (1995)6 SCC534', the Hon'ble Supreme Court observed that since the petitioner was holding a temporary service and was on probation, an order of termination simplicitor has been passed without attracting any stigma against him. It is also stated that since service records were found unsatisfactory, termination order cannot be held to be arbitrary and capricious.

Sudhakar

18. As the services of the applicant were found unsatisfactory which is evident from the order of extension of probation dated 07.9.90 and on the basis of the report of the Reviewing Committee, the order of terminating the services of the applicant was issued, which cannot be said to be arbitrary and capricious and it is not a stigma on the applicant. The probationer does not hold any civil post and the services of a probationer during his probation may be terminated by order ~~et~~ simplicitor. The provision of Article 311 of Constitution of India does not apply to a probationer. In view of the above legal position and facts and circumstances of this case, we are not inclined to grant any relief to the applicant, sought for.

19. Therefore, this O.A. is dismissed with no order as to costs.


Member (J)


Member (A)

/M.M./