

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: Allahabad, this 15th day of November, 2000.
SB

Coram: Hon'ble Mr. Rafiq Uddin, JM
Hon'ble Mr. S. Biswas, AM

Original Application No. 1068 of 1993

Ashok Kumar Pandey,
s/o Sri Ram Pandey,
aged about 27 yrs,
r/o village Panditpura,
Post Sitakund, Distt. Ballia (U.P.)

..... Applicant
(By Advocate Sri A. V. Srivastava)

Versus

1. Union of India through Secretary,
Ministry of Home Affairs,
New Delhi.

2. Director,
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
New Delhi.

3. Assistant Director (Establishment),
Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
New Delhi.

4. Assistant Director,
Subsidiary Intelligence Bureau,
Ministry of Home Affairs,
Government of India,
Srinagar,
Jammu & Kashmir.

..... Respondents.
(By Advocate Sri S. C. Tripathi)

ORDER

(By Hon'ble Mr. S. Biswas, AM)

1. By way of the application made under Sec. 19 of the Administrative Tribunals Act, the applicant has sought the following reliefs:-

(i) ^{to} quash the termination order dated 3.12.90
(as enclosed as Annexure No.A-7 to OA)
and the appellate order dated 16.3.93
(Annexure No.A-9 to OA) and suitable
direction to the respondents in this behalf.

2. The applicant was appointed after necessary formalities as Assistant Central Intelligence Officer Grade-II (General) vide Memorandum of the respondent dated 27.6.88. After successful completion of the training, the applicant was posted under Assistant Director, SIB, Srinagar J & K (Respondent No.4). He reported on 30.7.89 after availing "permissible" leave, first at Jammu and subsequently at Srinagar on 30.8.89. As per Office Order dated 517 dated 9.8.89, the applicant reported at Srinagar on 3.8.89, in compliance with order (endorsed) dated 12.5.89.

3. The applicant statedly thereafter proceeded on 5 days C.L. on receipt of the message about his mother's illness and himself fell sick in his native village under Ballia district. He consulted private medical practitioner. Thereafter, he statedly could not return to duty at Srinagar even after expiry of the sanctioned leave. He availed both private and govt. treatment facility as available to him in the village. The applicant statedly received a letter from Respondent No.4's office, which directed him to

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get himself treated by the Chief Medical Officer, Ballia. He got himself medically examined on 24.5.90. A medical report issued by the C.M.O. Ballia was timely sent to the Respondent No.4, with a copy to the applicant. His condition statedly did not improve and again he consulted private doctors w.e.f. 29.10.90 upto 3.11.92. He sent an application to Respondent-4 by enclosing the private doctor's certificate. He followed it up by another letter dated 17.9.92 to Respondent no.4.

4. Only on 25.10.92, the applicant received a Memorandum dated 7.10.92 from Respondent no.4 stating that his services were terminated under Rule 5 of CCS (Temporary Services) Rules, 1965 after serving one month's notice dated 3.12.90 (Annexure No.A-7 to OA). The applicant statedly did not receive the termination notice dated 3.12.90 at all. He came to know about it through the letter dated 7.10.92 at Respondent no.4 to whom he had corresponded in connection with his leave vide his letter dated 17.9.92. The applicant made an appeal dated 25.11.92 to the Deputy Director SIB. He was informed vide Memorandum dated 16.3.93 by Respondent no.3 that his appeal dated 25.11.92 was rejected. The order of Respondent no.2 was not sent to him along with the Memorandum.

5. The applicant has contended that when he was on leave on medical grounds in his village and unable to join duty and applied for extensions from time to time, his services were suddenly terminated under Rule 5 of CCS (Temporary Services) Rules, 1965 without giving him any opportunity or notice to explain by the Respondents as necessary to be done in accordance with the

principles of natural justice. Even the so-called notice of termination was also not received by him. He was only informed about it subsequently on 25.10.92 vide Memo dated 7.10.92. He was holding the post of Assistant Central Intelligence Officer after regular appointment and posted in Srinagar after completion of the requisite training. The said termination made without proper show-cause notice and opportunity to represent his case and to be heard was illegal and hence, liable to be quashed. The learned counsel for the applicant while arguing the case submitted a large number of identical cases wherein the terminations were challenged on the ground of non-observance of the principles of natural justice.

6. Heard the rival counsels on facts and law.
7. The learned counsel for the respondents objected that the applicant was posted in Srinagar falling under the jurisdiction of CAT at Chandigarh Branch. But since the applicant is presently residing at his village in Ballia district, the objection is not maintainable.
8. The learned counsel for the respondents further contended that the applicant was recruited against a temporary vacancy liable to be confirmed in terms of the Memorandum of the appointment dated 27.6.88. It was a contractual appointment in as much as it was clearly laid down in the said offer of appointment that it was a temporary appointment and liable to be terminated at any time by giving a month's notice or one month's salary.

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9. The applicant, though a temporary employee and liable to be terminated at any time with one month's notice, he had accepted the job with these terms and conditions. He proceeded on leave without getting the leave sanctioned and thereafter remained absent from duty without any sanctioned leave. However, only 5 days C.L. from January 1990 was sanctioned as he proceeded on leave without waiting for sanction of C.L. He joined at Jammu on 19.3.90 after over-staying for 54 days without any sanctioned leave. As arrangements were under way to transport him to Srinagar, the applicant again left without any permission from Jammu when he was in transit. He was asked to join duty by phonographic message dated 2.4.90, or face disciplinary proceedings that he joined after 54 days of unauthorised leave, but before he could be transported to his place of posting at Srinagar he again left unauthorisedly. He continued to apply for extension of leave upto October, 1990. Thereafter, no information of any kind was received from him. Instead, he kept on trying for getting his transfer to J & K cancelled. His illness was only a subterfuge. Thereafter, only in Sept 1992, he sent an application informing about his illness. His certificate of illness were found to be fabricated. The physician did not mention any name of ailment in the certificate. Innumerable letters and notices sent in this behalf were returned undelivered. Even the notice of termination sent to the applicant were returned undelivered with remarks that no such persons lived at the address. He clearly ^{refused} ~~waited~~ to receive the relevant correspondence.

10. Having gone through the facts, records and case laws cited by the applicant's counsel, we are not able to agree that the applicant's hands are clear.

It is evident that he had been avoiding the posting at a sensitive place like Srinagar. What right then he could have ^{to} challenged the termination order. He was holding a temporary post and ^{according to} the terms and conditions including that his service was liable to be terminated with one month's notice. His job was terminated in terms of appointment order in 1990. He filed this petition in 1993- clearly after 3 years thereafter and the onus of delay has been tried to be shifted upon the respondents on the plea of ailments and unacceptable medical certificates. In the meantime, he has tried to get his posting order cancelled.

11. In the circumstances of the case, in our view, the case laws are factually out of context. Here, we have a case where the applicant is trying to clearly avoid his posting in Srinagar and then build up his ground for cancellation of the order of posting. No stigma can be believably attached, if his services are terminated under Rule 5.

12. However, we have gone through the Memorandum of appointment dated 27.6.88. The relevant portion of the said Memorandum Para-2 are reproduced below:-

"The terms of appointment are as follows:-

1) The appointment is temporary. His permanent appointment to the post, if and when it is made permanent, however, will depend on various factors governing permanent appointment in such posts in force at the time and will not confer on him the title to the permanency from the date post is converted.

ii) The appointment may be terminated at any time by a month's notice given to either side, viz. the appointee or the appointing authority, without assigning any reasons. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before the expiration of the stipulated period of notice by making payment to him a sum equivalent to the pay and allowances for the period of to the pay and allowances for the period of notice of the unexpired portion thereof. His services are liable to be

terminated within a period of six months from the date of his appointment without any notice and without any reason assigned."

The appointing authority has been given the power to terminate the services of temporary employees under this Memorandum as well as terms of appointment. The discretion to terminate is in two parts. No notice is required for first six months. A temporary appointee can be terminated without any notice upto six months. Beyond six months' period, the appointment of temporary employees can be terminated under this provision after giving one month's notice.

13. The applicant was appointed under Order dated 27.6.88. He completed his training and then he was posted to Srinagar, where he joined on 3.8.89. His service was terminated on 3.12.90 by giving one month's notice. This is clearly after six months and even after two years of service. Normally in all departments and even in Civil services, the probationary period is for two years. We are not able to agree with the view that the services of a temporary employee can be terminated even after 2 years, which is clearly the probation period in all other departments, under Rule 5 of CCS (Temporary Services) Rules, 1965. In our view, if temporary services are terminated beyond 2 years or fixed probation period, which has not been done in this case, serious civil consequences ^{are likely to} ~~will~~ follow. There is no doubt that the applicant was regularly appointed and he would be confirmed in due course. The respondents would avail only a limited period of time for removal of a probationer for his unsatisfactory behaviour or service. Since he was removed after 2 years of service, the principle

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of natural justice should have been observed or regular disciplinary proceedings should have been initiated for unauthorisedly absence. Accordingly, order of termination dated 3.12.90 and the appellate order dated 16.3.93 are vitiated for non-observances of principle of natural justice. We accordingly vacate both these orders dated 3.12.90 and 16.3.93 as issued by the respondents or Respondents are at liberty to initiate appropriate disciplinary action for persist to terminate his service after giving proper opportunity, notice and personal hearing. No order as to costs.

S. Biju
A.M.

Ranjuddin
J.M.

Nath/