

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.746 OF 1995

Allahabad, this the 19 th day of May, 1999.

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

Jitendra Srivastava,
S/o. Sri K.K.Srivastava,
R/o. 2-A, Malviya Road,
George Town,
Allahabad.

..... Applicant

(C/A. Shri Ashok Bhushan, Advocate)

Versus

The Union of India through its
Secretary, Ministry of Railways,
(Railway Board), New Delhi-1

..... Respondent

C/R. Sri A.K.Gaur, Advocate.

O R D E R (Reserved)

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

In this original application the prayer of the applicant is to quash the impugned order of termination and to direct the respondents to post the applicant according to his status and to pay the arrears of salary since 1-6-1993.

2. Facts of the case as stated by the applicant are that the applicant was selected through Combined Competitive Examination, 1989 in Indian Railway Traffic Service

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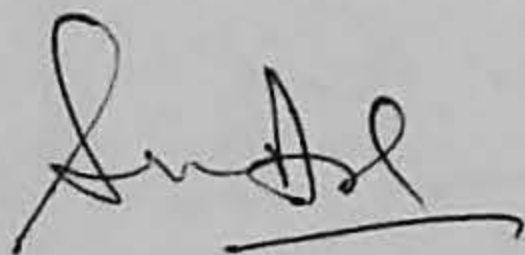
and was appointed as Probationer vide letter of appointment dated 21-1-91. It is stated that the training of the applicant was started with effect from 16-9-91 in Lal Bahadur Shastri National Academy of Administration, Mussoorie and applicant took training there upto 20-12-91. Thereafter the applicant was shifted to Railway Staff College, Vadodra where he attended the training till 11-6-93. It is stated that applicant fell ill and he went on medical leave w.e.f. 12-6-93 and continued to be on medical leave till January, 1995. It is stated by the applicant that due to his illness the applicant could not complete his training at Vadodra, but in the mean time the services of the applicant were terminated vide order dated 7-11-1994. It is further stated that applicant took the treatment from various Doctors as below :-

1. Dr. Sharad Kumar, B.Sc. MBBS, D.A. Moti Lal Nehru Medical College, Allahabad.
2. Chief Medical Superintendent, Railway Hospital Allahabad.
3. Dr. M.Lal, B.Sc., MBBS, D.Orth. Pal Medicals Rajapur, Allahabad.
4. Dr. Ashok Agrawal, M.S. Nazareth Hospital, Allahabad.
5. Dr. Gyanendra Mohan, M.D.m M.L.N. Medical College, Allahabad.

Applicant went on sending the applications accompanied by Medical Certificates dated 26-12-93, 14-2-94, 2-4-94, 28-6-94 and 15-11-94, but respondents without giving any show cause notice and without giving any opportunity of hearing to the applicant terminated his services by an impugned order dated 7-11-94. which is arbitrary, malafide and inviolation of principles of

natural justice, therefore liable to be quashed. In this way by this application applicant has made the prayer for the relief as mentioned above.

3. Counter was filed. In the counter it is stated that the applicant remained on unauthorised absence from 13-1-93 to 11-4-93 which was treated as leave without pay (87 days). It is also stated that applicant appeared in Civil Service Preliminary Examination on 13-6-93 and qualified the same with Roll No.141368. It is further stated in the counter that the applicant was directed to undergo field training, project work on South Eastern Railway alongwith his batchmates and also for Divisional Training on Northeast Frontier Railway, but on enquiry from Ajay Shankar it was revealed that applicant was not with him during the project work and he has not reported for Divisional Training during the period 17-5-93 to 18-6-93. As the applicant appeared in Civil Services Preliminary Examination on 13-6-93 and qualified the same his claim for being ill is not correct. It is also stated that Chief Medical Superintendent, Allahabad vide letter dated 11-11-93 was directed to examine the probationer, but the applicant never reported back to the Railway Hospital, nor conveyed his consent for medical examination at his residence inspite of repeated reminders. Railway Staff College, Vadodara also asked the applicant vide his letter dated 24-5-94 to report the college latest by 6-6-94 and the applicant was also warned that in the event of his non-compliance the Railway Board would be referred for termination of his services, but the applicant did not respond, therefore Railway Staff College, Vadodara recommended for his termination and thereafter his services were terminated by the impugned order dated 7-11-1994. It is



stated in the counter that on the basis of as mentioned above this original application is devoid of any merit and liable to be dismissed.

4. Rejoinder was filed, reiterating the facts stated in the original application.

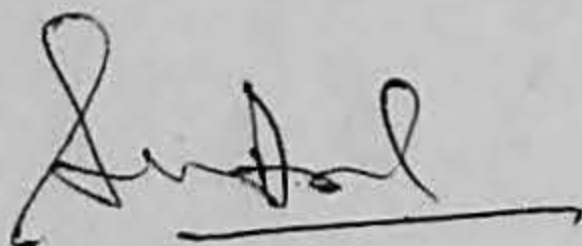
5. Learned lawyer for the applicant has submitted that impugned order of termination is punitive as the basis and foundation of the order is unauthorised absence of the applicant. Therefore order of termination passed without affording any opportunity to show cause is void and illegal as envisaged under Article 311 (2) of the Constitution of India.

6. In support of his contention he has referred :-

- i) Parshotam Lal Dhingra Vs. Union of India reported in AIR 1958 SC 36.
- ii) Oil and Natural Gas Company Vs. Dr. Md. S. Iskander Ali reported in AIR 1980 SC 1242.
- iii) Shamersingh Vs. State of Punjab reported in AIR 1974 SC 2192.

7. On the other hand learned lawyer for respondents objected these arguments of the learned lawyer for the applicant and submitted that applicant has not come with the clean hands and impugned order of termination is neither arbitrary nor illegal and inviolation of Article 311(2) of Constitution of India. In support of his contentions he has referred -

- 1) 1992 (3) Scale 100 Unit Trust of India Vs. T. Vijay Kumar,
- 2) AIR 1974 SC 2192 Shamsher Singh Vs. UOI & Ors.
- 3) J.T. 1999 (1) Supreme Court 396 (D.P. Banerji Vs. S.N. Bose National Centre).
- 4) AIR 1958 (Supreme Court) page 36 P.L. Diner Vs. UOI & Ors.



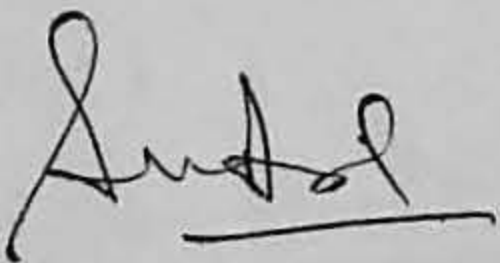
- 5) AIR 1961 Supreme Court Page 177 (State of Orissa Vs. R.N.Das)
- 6) AIR 1963 Supreme Court page 531 Madal Gopal Vs. State of Punjab.
- 7) AIR 1963 Supreme Court page 1552 Rajendra Chand Vs. UOI & Others.
- 8) AIR 1984 Supreme Court page 636 Anoop Jaiswal Vs. UOI & Ors.
- 9) AIR 1980 (Supreme Court) Page 42 State of Maharashtra Vs. Virappa.
- 10) 1993 S.C.C. Labour & Service (Vol.I)

8. We have given thoughtful consideration to the rival contentions of both the parties and also perused the whole case file and written submissions filed by the learned lawyer for both the parties.

9. Article 311 (2) of the Constitution of India reads as under :-

"(2) No such person as aforesaid shall be dismissed, or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a responsible opportunity of being heard in respect of those charges."

10. A reading of the provisions of Article 311 (1) and (2) shows that the same applies to a person who is a member of Civil Service of the Union or All India Service or Civil Service of State or holds civil post for some charges. In the instant case the applicant's services were terminated during the period of probation. No material has been laid before us either by the applicant or by his learned counsel to support the view that the applicant can be treated as a member of a civil service etc. or is a holder of a civil post while on probation.

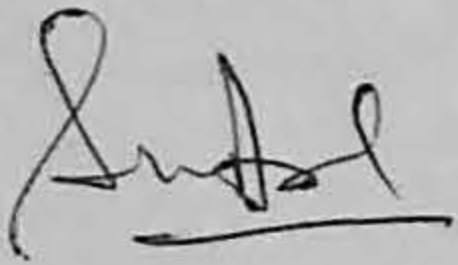


Before the applicant can be considered to be holding civil post under the Union, what is important and relevant is that he should have a right to hold such a post. Apparently such a right can accrue to a probationer only after satisfactory completion of probation.

11. The Apex Court of this country consistently delivered the judgement on status of a probationer. In Parshotam Lal Dhingra Vs. Union of India AIR 1958 SC 36 which is regarded as Magna Carta of the Indian Civil Services by the Hon'ble Supreme Court and held as under :-

"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."

12. In State of Bihar Vs. Gopy Kishore Prasad AIR 1960 SC 689 it was held by Hon'ble Sinha C.J. that termination without notice but after holding an enquiry into the alleged misconduct or inefficient or some similar reasons would be punitive.



13. Hon'ble Supreme Court gave a new dimension to the legal principle on the status of probationer in the State of Orissa Vs. Ram Narain Das AIR 1961 SC 177 and held that if the purpose of enquiry is

to ascertain whether the employee is fit to be confirmed, and not the enquiry into the charges of misconduct, inefficiency, or negligence, the termination of a probationer is upheld.

14. In Madan Gopal Vs. State of Punjab AIR 1963 SC 531 it was held that if the report of enquiry is about misconduct and the termination was based on such report the order of termination was punitive.

15. This theory of 'object of enquiry' was again emphasised in Jagdish Mitter Vs. Union of India, AIR 1964 SC 449 Hon'ble Gajendragadkar, J. while delivering the judgement of the Apex Court held that if the enquiry was held only for the purpose of deciding whether the temporary servant would be continued or not it could not be treated as punitive.

16. In Champaklal Chimanlal Shah Vs. Union of India, AIR 1964 SC 1854 it was held by Hon'ble Wanchoo, J. ^{after} that the order of termination soon passed / preliminary enquiry held not punitive as the purpose of enquiry is to find out prima facie case to start with regular departmental enquiry.

17. In Shamsher Singh Vs. State of Punjab reported in AIR 1974 SC 2192, seven Judges Bench of Hon'ble Supreme Court held that before the probationer was confirmed, the authority concerned was under the obligation to consider whether work of the probationer was satisfactory or whether he was suitable for the post. It was further held in this case that if the object of enquiry was to ascertain the truth of allegations of misconduct

and the enquiry officer gave his finding on allegations of misconduct the order of termination based on such recommendations in the report is punitive. Therefore, the order of termination of services of Sri Ishwar Chand Agrawal was held clearly by way of punishment in the facts & circumstances of this case. In case of Oil and Natural Gas Company Vs. Dr. Md. S. Sikandar Ali reported in AIR 1980 SC 1242 it was held that probationer had no right to the service. Their lordship of Supreme Court in para-7 of the judgement observed as follows :-

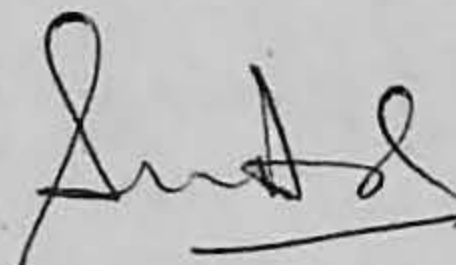
"It is obvious that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. The remarks in the assessment roll merely indicate the nature of the performance put in by the officer for the limited purpose of determining whether or not his probation should be extended. These remarks were not intended to cast any stigma."

18. In High Court of Judicature at Patna Vs. Pandey Madan Mohan Prasad Sinha and Others reported in 1997 SCC (L&S) 1703 (II) their lordship of Hon'ble Supreme Court of India was 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. Such consideration shows non-arbitrariness of the decision. Consideration of complaints regarding integrity, character and morality of the probationer and his alleged indulgence in drinking and gambling in taking decision to terminate his services does not show that the decision is punitive."

19. In Dipti Prakash Banerjee Vs. Satvendra Nath Bose Hon'ble Supreme Court of India held that if findings were arrived at an enquiry as to misconduct behind the back of the officer or without a regular departmental enquiry the simple order of termination is to be treated as founded on the allegations of misconduct and will be bad but if the enquiry was not held, no finding were arrived at and the employer was not inclined to conduct enquiry, but at the same time he did not want to continue the employee against whom there were complaints it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

20. In Radhey Shyam Gupta Vs. U.P. State Agro Industries Corporation Ltd and another Hon'ble Supreme Court of India 1999 SCC (L&S) 439 it was held that the termination of the services of a temporary servant or one on probation, on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with the object of finding out any misconduct on the part of the officer. It is done only with a view to decide whether he is to be retained or continued in service.



21. On the basis of above all the conclusion is that termination of the services of temporary servant or one

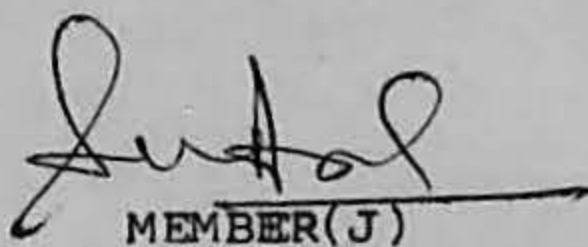
on probation on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive and only an order of termination simplicitor because this was done only with a view to decide whether the employee is to be retained or continued in service, but if the enquiry is done with a view to find out the misconduct and order of termination was passed on the basis of such an enquiry report which form a foundation the order of termination in such cases is punitive.

22. In the instant case according to the applicant himself the order of termination dated 7-11-94 was issued during the probation period and according to para-4 of the order of appointment dated 21-1-91 the applicants' services were terminated. The impugned order does not mention about dismissal or removal of the applicant on the ground of any charge. Therefore the impugned order or termination of the applicant who was a probationer and was undergoing a training during the probation period does not appear to be punitive or stigmatic, and the provision of Article 311 (2) of the Constitution of India are not attracted at all in the instant case. The services of a probationer can be terminated/discharged forthwith if in the opinion of the Government the work and conduct of the probationer is unsatisfactory or shows that he is unlike to become efficient. Applicant being on probation failed to maintain proper devotion to duty and remained absent for quite a long period inspite of notice/warning given to him by the Principal, Staff Training Collage, Vadodara. Therefore order of termination of the applicant was order of termination simplicitor and not punitive.

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23. On the basis of foregoing discussion, we are of the considered opinion that applicant is not entitled to any relief sought for and this original application is devoid of any merit, and therefore, it is liable to be dismissed.

24. We, therefore, dismiss this original application with no order as to costs.


MEMBER(J)


MEMBER(A)

satya/