

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 11th day of January 2008.

Original Application No. 1064 of 2002

Hon'ble Mr. G. George Paracken, Member (J)

Hon'ble Mr. K.S. Menon, Member (A)

Brij Bhan Singh, S/o Sri Dular Singh, R/o Village Shantipur,
Post Office Mangrauli, Distt: Etah.

... Applicant

By Adv: Sri J.P. Singh

V E R S U S

1. General Manager, Defence equipment Factory Hazratpur,
Firozabad.
2. Union of India through its Secretary, Ministry of Defence,
New Delhi.

... Respondents

By Adv: Sri N.C. Nishad

O R D E R

By G. George Paracken, Member (J)

The applicant's grievance in this OA is regarding the Annexure A-1 order dated 24.08.2002 terminating his service under Clause 2-C of his appointment letter dated 23.09.2000 which reads as under:

"Your services may be terminated at any time during the probation period by either side without notice."

2. The brief facts of the case are that the applicant was offered the post of "Electrician/Semi Skilled" vide Annexure A-3 offer of appointment letter dated 23.09.2000, Clause inter alia, containing the aforesaid.

3. On accepting the above offer, he was appointed to the aforesaid post vide Annexure A-4 letter dated 06.10.2000 with the condition that he will be on probation for a period of two

years and his services can be terminated during the probation period without any notice. According to the applicant, one Rishi Pal Singh, Stenographer who was inimical to him had implicated him in theft case by getting some article belonging to the factory recovered from inside his bicycle seat. It ~~was~~[✓] ended up with a 'Warning' given to him on 18.08.2001. In another incident one Hamendra Kumar Pandey lodged an FIR under Section 323, 324, 504 and 506 of IPC against the applicant and he was arrested by the police of South Police Station, Firozabad on 28.06.2002 near Ram Shyam Hotel and he was detained in jail upto 01.07.2002 and released on bail. He informed the aforesaid incident to the respondents on 02.07.2002 and by Annexure 8 memorandum dated 12.08.2002 he was served with a show cause notice to submit his representation why his services should not be terminated in terms of paragraph 2-C of the appointment letter referred to above. The applicant gave the Annexure A-9 explanation dated 16.08.2002, but the respondents vide the impugned Annexure A-1 order dated 24.08.2002 terminated his service with immediate effect stating the following reasons:

- "(i) Sri Brij Bhan Singh was earlier found involved in a theft case stealthily carrying Government materials under his cycle seat over on 05.03.2001 and a warning was issued to him vide letter No. DEFH/2301/VIG/BS dated 18.08.2001.
- (ii) Shri Brij Bhan Singh was arrested by the Police on 28.06.2002 in a criminal case and he remained in police custody and also in jail for more than 48 hours (w.e.f. 28.06.2002 to 01.07.2002)."

In the rejoinder affidavit the applicant has also submitted that later he was exonerated in the aforesaid criminal case by the

Chief Judicial Magistrate Firozabad vide his order dated 30.08.2006.

4. The applicant challenged the aforesaid termination order on the ground that it was arbitrary and illegal because it was issued only for the reason that before completing his probation period he was arrested and detained in jail for 48 hours. He contended that the termination was a punitive action and the respondents have failed to follow the prescribed procedure for imposing penalty, if any, under Rule 14 of CCS (CCA) Rules 1965. Further, the learned counsel for the applicant has submitted that the impugned termination order amounts to double jeopardy as for the alleged theft committed by him, he had already suffered the punishment of warning.

5. The respondents in their reply have submitted that the applicant had committed a theft of some Govt. material during his probation period but a very lenient view was taken against him and he was let off by issuing a warning to him not to repeat such activity in future as per Annexure 2 letter dated 18.08.2002. Thereafter, he was involved in a criminal case and he was arrested and detained in jail for more than 48 hours. He was served with a show cause notice. He has also filed an appeal against the termination order after the present OA has been filed before this Tribunal. He was terminated from service during the probation period only after taking into consideration

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over all unsatisfactory performance such as the in theft case and the criminal case.

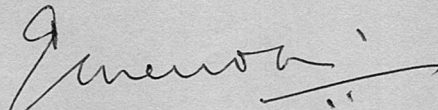
6. We have heard Sri J.P. Singh learned counsel for the applicant and Sri D. Tiwari brief holder of Sri N.C. Nishad learned counsel for the respondents. It is no body's case that the performances of the applicant as an Electrician/Semi Skilled was not satisfactory. There were no complaints about his efficiency and performance of duties. However, there was an allegation of theft of certain articles by the applicant and considering the gravity of the offence committed by him he was awarded a punishment of warning. The matter ended there. The immediate provocation for the respondents to terminate the service of the applicant was that he was arrested in a criminal case and detained in custody for more than 48 hours. As a disciplined employee he had informed about the incident of arrest and detention to the respondents on the next day of his release on bail itself. However, the respondents have given him a show cause notice to explain his position. He has accordingly submitted his representation explaining his part of the story. However, the respondents have terminated his service not only for the reasons that he was arrested and detained in a criminal case but for the earlier incident of theft for which a punishment has already been awarded to him. In the impugned termination order the respondents have clearly stated that the reasons for his termination were alleged theft committed by him which ended up in a warning issued to him and the incident of

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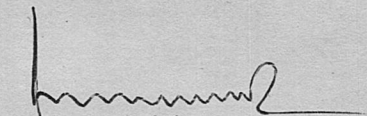
his involvement in a criminal case which resulted in his arrest and detention. Obviously the impugned termination order is not an order simpliciter issued merely in terms of the clause for termination contained in the appointment letter. On the other hand the termination order contains stigmatic observations that he was involved in theft as well as in criminal case. This is nothing but a punitive action against the applicant and not a termination order wholly innocuous.

7. In the above view of the matter we find that that the termination order is absolutely unsustainable as the same is punitive in nature casting stigma upon the applicant and also visiting him with evil consequences. We, therefore, allow this OA. The impugned order dated 24.08.2002 terminating the services of the applicant w.e.f. the same date is quashed and set aside. The respondents are directed to reinstate the applicant with all consequential benefits except back wages within a period of two months from the date of receipt of this order.

8. In these circumstances there shall be no order as to costs.


Member (A)

/pc/


Member (J)