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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ORIGINAL APPLICATION NO. 1125 OF 2006

ALLAHABAD this the 8th day of May, 2007.

CORAM:

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MR. P.K. CHATTERJI, ADMINISTRATIVE MEMBER**

Roopali Singh, Aged about 30 years, W/o Dr. Nischal, presently posted as T-3 (Lab Technician), Central Avian Research Institute, R/o Village Phoolpur, Mithanpur, Post Chijlet, District Moradabad.

.....Applicant

Versus

1. Union of India through Secretary Indian Council of Agricultural Research (ICAR), Krishi Bhawan, Dr. Rajendra Prasad Marg, New Delhi.
2. Under Secretary (Vigilence), Indian Council of Agricultural Research (ICAR), Krishi Bhawan, Dr. Rajendra Prasad Marg, New Delhi.
3. Director, Central Avian Research Institute, Izatnagar, Bareilly, (U.P.)
4. Administrative Officer, Central Avian Research Institute, Izatnagar, Bareilly, (U.P.)

.....Respondents

Present for the Applicant: Sri K.P. Singh.

Present for the Respondents: Sri V.K. Singh.

ALONGWITH

ORIGINAL APPLICATION NO. 1189 OF 2006

Shri Arun Kumar, Aged about 32 years, S/o Sri Shanti Prasad, Posted as LDC, Central Avian Research Institute, Izatnagar, Bareilly, (U.P.), R/o 303 Bazar Sandal Kha Post Office Quila Bareilly (U.P.)

.....Applicant

Versus

1. Union of India through Secretary Indian Council of Agricultural Research (ICAR), Krishi Bhawan, Dr. Rajendra Prasad Marg, New Delhi.
2. Under Secretary (Vigilence), Indian Council of Agricultural Research (ICAR), Krishi Bhawan, Dr. Rajendra Prasad Marg, New Delhi.
3. Director, Central Avian Research Institute, Izatnagar, Bareilly, (U.P.)
4. Administrative Officer, Central Avian Research Institute, Izatnagar, Bareilly, (U.P.)

.....Respondents

Present for the Applicant: Sri K.P. Singh.
 Present for the Respondents: Sri V.K. Singh.

ORDER
BY DR. K.B.S. RAJAN, JUDICIAL MEMBER

As the issue involved in the two O.As is one and the same, a common order is passed in these two cases.

2. Facts as contained in the OA No. 1125/06 are as under:-
 - (a) The post of T-3 (Lab Technician) in the pay scale of Rs.4500-125-7000 has been notified by the Director CARI, vide notification No.3/2004 dated 20-26 November, 2004. In pursuance of the aforesaid notification, the applicant moved application addressed to the Director, Central Avian Research Institute, Bareilly, Respondent No.3. In pursuance of the aforesaid selection the respondent has issued a letter of offer of appointment dated 18.01.2005 in favour of the applicant. Chief Medical Officer Duffrin Hospital



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Bareilly has issued a medical certificate in favour of the applicant and the same has been communicated to the applicant by the respondents vide letter dated 01.02.2005 with the direction to submit her joining report in the office of respondents. In pursuance of the offer of appointment order dated 18.11.2005 the respondent has issued the appointment order dated 14.02.2005 in favour of the applicant which shows that the applicant has joined the aforesaid post with effect from 01.02.2005 forenoon. The applicant has performed his duties with full satisfaction of his superiors and after expiry of near about 20 months period, the services of the applicant has been terminated vide order dated 05.10.2006 and office order dated 06.10.2006 by the opposite party No.2 and 3 respectively in pursuance of the Proviso to sub-rule 1 of the Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Hence the applicant seeking relief from this Hon'ble Tribunal.

3. Facts as contained in the OA No. 1189/06 are as under:-

(a) The post of Lower Division Clerk in the pay scale of Rs.3050-75-3950-80-4590 was notified through employment news by the respondent No.3 in the month of June/July, 2004. In pursuance of the aforesaid notification, the applicant moved application addressed to the Director, Central Avian Research Institute, Izatnagar Bareilly, Respondent No.3. In pursuance of the aforesaid notification a call letter dated 10.8.2004 was issued to the applicant by the competent authority. According to the aforesaid call letter, the written examination was scheduled to be held on 25.8.2004 in the premises of Central Avian Research Institute, Izatnagar Bareilly. The applicant has been declared successful in written test and therefore the



respondents had issued a letter dated 15.09.2004 and informed the applicant to appear in the Typing Test which was scheduled to be held on 29.09.2004 in the premises of Central Avian Research Institute, Izatnagar Bareilly. The respondents had issued offer of appointment dated 17.11.04 in favour of the applicant and posted the applicant at Central Avian Research Institute, Regional Centre, Bhuvaneshwar. The applicant has been directed for joining the duty after medical examination. The applicant has submitted his joining in pursuance of the order dated 18.11.2004 vide joining letter dated 24.11.2004 to the Central Avian Research Institute, Regional Centre, Bhuvaneshwar. In pursuance of the memorandum dated 17.11.2004, the competent authority has issued the appointment order dated 29.11.2004 in favour of the applicant. The applicant has performed his duties with full satisfaction of his superiors and after expiry of near about 23 months period, the services of the applicant had been terminated vide order dated 05.10.2006 and office order dated 06.10.2006 by the opposite party No.2 and 3 respectively in pursuance of the Proviso to sub-rule 1 of the Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Hence the applicant seeking relief from this Hon'ble Tribunal.

4. Respondents have contested the OA and identical replies have been filed and the crux of the replies is as under:-

(a) Council of Agricultural Research (ICAR, for short) had received some complaints against the then Director, Dr. Rajvir Singh, that he employed a number of his relatives and also the relatives of the officials of the Institute on various posts of CARI. Complaints so

made were investigated by a three members' Committee of ICAR Headquarter. The said Committee investigated the case from the original records by making an on the spot enquiry. As per the finding reached by the three members' Committee, It is absolutely clear that there were, in fact, Irregularities in making appointment of some employees by the Director and other officials and they were closely related to them.

(b) The Central Vigilance Commission in agreement with the tentative view of the Council advised to initiate disciplinary proceeding against the officers involved in the irregularities and terminate the services of those involved in the irregularities and terminate the services of those temporary officials who were appointed in violation of recruitment rules and prescribed procedures. The tenure of Dr. Rajvir Singh, Director, CARI was terminated/curtailed inasmuch as he was found involved in the aforesaid irregularities.

(c) The applicant being daughter of Shri Rajvir Singh, Director of C.A.R.I. was appointed as T-3 (Lab. Technician) alongwith 2 others although only one post of T-3 was advertised. No regard was paid to the reservation policy of the Government of India regarding reservation in appointment. The orders of termination of Roopali Singh, the applicant herein, were passed with the approval of President, ICAR i.e., Hon'ble Agriculture Minister. The orders of termination were passed under the Temporary Service Rules by the Director, CARI and the said termination orders cannot be said to be an order of punishment inasmuch as the orders of

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terminations were passed without casting any stigma on the employee. Termination of services under the Temporary Service Rules does not tantamount to dismissal or removal. Therefore, the provisions of Article 311(2) of the Constitution are not attracted at all in the present case.

5. Counsel for the applicant stated that in the two cases, the respondents have terminated the services of the applicants under the provisions of Rule 5 of the Temporary services Rules and that no reasons have been adduced. If the contents of the reply are true in that the Director had favoured a few 'blue eyed' boys then also, the termination is illegal since there has been no effective finding to that extent. Just because there is a provision in the Temporary Services Rules, the same cannot be indiscriminately invoked even without making the applicants know about the real reasons behind it. Respondents, according to the counsel for the applicant, had only acted with a sense of vindictiveness inasmuch as whatever their grievance is there against the Director they have diverted the same upon the respondents. The mere suggestion that CVC has recommended for termination of the services of the applicants cannot be the ground for such termination. The entire action is arbitrary and illegal, submitted the counsel for the applicant. To support his arguments, the applicant relied upon the Constitutional Bench Judgment in the case of Samsher Singh vs State of Punjab (1974) 2 SCC 831^{and 4}, a latest order of this Tribunal in

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OA No. 1250/2006 decided on 26th April 2007.

6. Respondents contended that a probationer has no right to stick to the post and the order does not reflect anything punitive. Hence, the impugned order has been justified.

7. Arguments have been heard and documents perused. Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 reads as under:-

"I. Termination of services under Rule 5:

"Rule 5(1). (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month

Provided that the service of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or, as the case may be, for the period by which such notice falls short of one month."

8. The order of termination is in the following format and the same reads as under:-

"..... was offered an appointment purely on temporary basis to the post of at vide Institutes's Memorandum No. dated

In pursuance of the Proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, the President, ICAR hereby terminate forthwith the services of and direct that he/she shall be entitled to claim a sum equivalent to the amount of his/her pay plus allowances for the period of notice at the same rates at which he/she was drawing them immediately before the termination of her service, or, as the case may be, for the period by which such notice falls short of one month."

9. In the past the interpretation of the Temporary Services Rules had been to the effect that when the provisions provide for termination of service without assigning any reasons, the Courts need not have to go into the reasons for termination. In this regard, reference may be made to the decision of the Apex Court in the case of **Raj Kumar v. Union of India, (1975) 4 SCC 13, at page 15 :**

"When action is taken against him under the relevant rules which enable the authorities concerned to terminate his temporary service without assigning any reason the Court would not go into the reasons which led to the appellant's services being terminated".

10. Thus, earlier, the power to terminate the services of a probationer was almost unquestionable, whatever may be the reason for such termination. This interpretation, of course has in due course of time undergone changes which is evident from the judgment of the Apex Court in the later cases as under:-

"(a) In Krishnadevaraya Education Trust v. L.A. Balakrishna, (2001) 9 SCC 319 , the Apex Court has held as under:-

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5. There can be no manner of doubt that the employer is entitled to engage the services of a person on probation. During the period of probation, the suitability of the recruit/appointee has to be seen. If his services are not satisfactory which means that he is not suitable for the job, then the employer has a right to terminate the services as a reason thereof. If the termination during probationary period is without any reason, perhaps such an order would be sought to be challenged on the ground of being arbitrary. Therefore, naturally services of an employee on probation would be terminated, when he is found not to be suitable for the job for which he was engaged, without assigning any reason. If the order on the face of it states that his services are being terminated because his performance is not satisfactory, the employer runs the risk of the allegation being made that the order itself casts a stigma. We do not say that such a contention will succeed. Normally, therefore, it is preferred that the order itself does not mention the reason why the services are being terminated.

6. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment. The probationer is on test and if the services are found not to be satisfactory, the employer has, in terms of the letter of appointment, the right to terminate the services. (Emphasis supplied)

(b) In *Union of India v. A.P. Bajpai*, (2003) 2 SCC 433, referring to the above case, the Apex Court has held as under:-

6. In a recent case in *Krishnadevaraya Education Trust v. L.A. Balakrishna* (2001) 9 SCC 319 dealing with a case of termination simpliciter of a probationer, this Court observed that there can

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be no manner of doubt that the employer is entitled to engage the service of a person on probation and if his services are not satisfactory during the period of probation, which means he is not suitable for the job, then the employer has a right to terminate the services. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. (Emphasis supplied)".

11. In the case of such probationer, adopting a short circuit inasmuch as where certain misconduct is to be proved by way of holding due departmental proceedings and by giving due opportunity to the individual concerned, without taking recourse to the same, by coming to a *prima facie* conclusion in this regard, if the above provisions of Temporary Service Rules are invoked, that had been criticized by the Apex Court earlier. In the case of *Samsher Singh (supra)* the Apex Court has held as under:-

"63. No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution."

However, later, in the case of *Union of India vs Bihari Lal Sidhana* (1997) 4 SCC 385, the above was slightly diluted

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and the Apex Court has held as under:-

"Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money."

The above was discussed in a recent case of **Dhananjay v. Chief Executive Officer**, (2003) 2 SCC 386.

12. In the decision relied upon by the counsel for the applicant in OA No. 1250/2006, this Bench of the Tribunal had held as under:-

"12. On the other hand, in the case of **V.P. Ahuja reported in (2000) 3 SCC 239** the following observation has been made by the Hon'ble High Court while deciding whether the service of a probationer can be terminated without asking any reason. In para seven of the judgment the following observations was made :-

"7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice."

In the case of **Anoop Jaiswal Versus Government of India and another** reported in 1984 SCC (L&S) 256. In para 12 of the judgment the following observations was made :-

"12. It is, therefore, now well settled that where

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the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

In the case of **Dipti Prakash Banerjee Versus Satevendra Nath Bose National Centre for Basic Sciences, Calcutta and others** reported in AIR 1999 SC 983. The Hon'ble Apex Court having pleased the following observation has been made :-

"As to in what circumstances an order of termination of a probationer can be said to be punitive or not depends upon whether certain allegations which are the cause of the termination are the motive or foundation. If findings were arrived at in inquiry 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 and will be bad."

13. In the instant case the service of the applicant has been terminated on the ground that the Director has committed some illegality/irregularities at the time of selection. It has been also pleaded by the respondents that some undue favour was shown to the applicant by the Director. This fact was not brought to the notice of the applicant but basing on an enquiry report made against the Director the services of the applicant while he was on probation has been terminated. In that case we are of the view that allegations made against the applicant are the cause of termination and at the motive and foundation. This enquiry has been conducted back of the officer without a regular departmental enquiry. So even if the order of termination is a simple disability treated as founded on the allegations and will be bad.

14. As we have earlier stated that the services of the applicant have been terminated in pursuance of provision to Sub Rule (1) of Rule 5 of CCS (TS) Rules, 1995. When the service of a probationer is terminated under the above rules the probationer is required to know about his

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adequacy/deficiency. This Tribunal in case of **Manorama Devi (Smt.) Versus U.O.I. and others** reported in 579 Swamy's CL Digest 1993 after referring the different case laws of this subject has held that the probationer to be made known of inadequacy/deficit affording him opportunity to improve before termination his services under Rule 5 of CCS (TS) Rules, 1995. The CAT Calcutta Bench in case of **Dipak KR Das Versus Union of India and others** reported in 163 Swamy Civil Digest 1995/1. It has been held that even if there had been procedural irregularity of selection when the applicant has already appointed, the cancellation of such appointment without show cause is illegal. In that case in hand the respondents have taken the stand that the Director had committed some procedural irregularities at the time of selection. The applicant has been appointed and was on probation. His services have been terminated without show cause. In that case we are of the view that the action of the respondents in terminating the service of the applicant without show cause notice is illegal.

15. Upon hearing the learned counsel for the parties and perusing the materials available on record and keeping in view the above legal position in view we are of the opinion that the termination of service of the applicant stated to have been made as per the provisions of Sub Rule (1) of Rule 5 of CCS (TS) Rules, 1995 without giving opportunity is illegal and would not be sustainable in the eye of law.

16. Hence the OA succeeds and is allowed. We are hereby quashing the order of termination dated 5.10.2006 and direct the respondents to take the applicant back in service forthwith....."

13. In the instant case, which is identical in all the fours, as that in the aforesaid O.A., the applicants' services were terminated on the suggestion of CVC vide para 18 of the counter in OA 1125/06. It is not on the ground that the performance of the applicants was found unsatisfactory, nor is it the case that in their appointment, which *prima facie* is illegal, there has been any hand

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of the applicants. It is not exactly known whether the decision in the case of the Director who had made the appointments of the applicants in curtailing his tenure as Director had attained finality. If the Director was absolved of his charges, then obviously the termination of the applicants' services at this stage would be thoroughly inappropriate. Even if the said Director happened to be guilty of some misconduct, in so far as the applicants are concerned, unless their hands in the alleged 'irregular' appointment could be proved, their termination, when performance was not deficient in any aspect, would have to be held as illegal.

14. Even independent of the decision of the Tribunal in OA No. 1250/06, these cases on the basis of the above mentioned reasons and discussions are to be allowed. Added to the same is the legal position about respecting the precedent.

In the case of ***Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644***, the Apex Court has held as under:-

"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the

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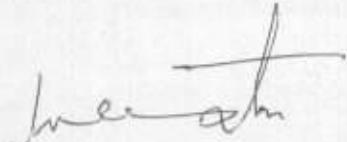
judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. "

15. On the basis of the above dictum, we are in full agreement with the decision of the Tribunal In OA No. 1250/06 which relates to the identical issue. Hence, ***the O.As are allowed.*** It is declared that the impugned Annexures A-5 and A-6 orders respectively dated 05-10-2006 and 06-10-2006 in OA No. 1125/06 and Annexure A-7 and A-8 orders respectively dated 05.10.2006 and 06-10-2006 in OA No. 1189 of 2006 are hereby quashed and set aside. It is declared that the applicants are deemed to have continued in service as if the aforesaid orders were not issued. They would, therefore, be entitled to consequential benefit of salaries for the past period, increment and other attendant benefits and the arrears of pay shall be paid to them within a period of three months from the date of communication of this order. Reinstatement of the applicant in service shall be within one week from the date of their furnishing

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to respondent No. 3, a certified copy of this order.

16. Under the circumstances, there shall be no orders as to costs.



P.K. CHATTERJI
ADMINISTRATIVE MEMBER



Dr. K B S RAJAN
JUDICIAL MEMBER