

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

this the 26th day of **April, 2007.**

HON'BLE MR. P.K. CHATTERJI, MEMBER-A.
HON'BLE MR. S.K. DHAL, MEMBER-J

ORIGINAL APPLICATION NO. 1250 OF 2006

Anuragh Kumar Johri, S/o Dr. T.S. Johri, R/o 211/11
Shiv Kutti Prem Nagar, Line Par (Vishnupuri),
Izzatnagar, Bareilly.

.....Applicant

V E R S U S

1. Union of India through the Secretary Ministry of Agriculture, Krishi Bhawan, New Delhi.
2. The Indian Council of Agricultural Research, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi through its President.
3. The Central Avian Research Institute, Izzatnagar, Bareilly through its Director.
4. The HOD, Avian Nutrition Feed & Technology Department, CARI, Izzatnagar, Bareilly.

.....Respondents

Present for the Applicant: Sri A. Srivastava
Present for the Respondents: Sri V.K. Singh.

O R D E R

BY S.K. DHAL, MEMBER-J

This O.A. has been filed by the applicant with a prayer to quash the order dated 5.10.2006 (Annexure-1) passed by the Under Secretary (Vig.) on behalf of the President ICAR and the order dated 6.10.2006 (Annexure-2) passed by the Director (Acting), Central Avian Research Institute, Izzatnagar, Bareilly.

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2. The case of the applicant ~~are~~ ^{was} that he was appointed as Research Associate in a purely temporary capacity w.e.f. 18.10.2000 under the time bound Research proposal on CARI, Izzatnagar. This appointment continued till 30.11.2004. An advertisement was published in Employment News inviting applications for the post of T-3 (Lab. Asstt.) in the pay scale of Rs. 4500-125-7000/- on 20/26.11.2004. The applicant applied for the said post and faced the selection process. He was selected. He was medically examined and was found fit for the post by the CMS, Bareilly. He was asked to report for duty to the Head Avian Nutrition & Feed Technology, CARI, Izzatnagar. The appointment order was issued after completing all formalities as per the terms & conditions laid down in the office memorandum dated 18.1.2005. He joined on 19.1.2005. His services were being utilized for handling of sophisticated equipments (page 8 para 4.11 of the O.A.). He was paid salary till September, 2006.

3. When the matter stood thus, he received an order dated 5.10.2006 issued under the signature of the Under Secretary (vig.) for and on behalf of President, ICAR, New Delhi (respondent no.2) purporting to terminate his services forthwith exercising powers under proviso to Sub-Rule (1) of Rule 5 of the CCS (CCA) Rules, 1965 (Annexure-1). In pursuance of the said order an order dated 6.10.2006 was passed by the Director (Acting), CARI,

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Izzatnagar, terminating the services of the applicant with immediate effect (Annexure-2).

4. Under this background, it is averred by the applicant that both the orders (Annexure-1 & 2) are wholly illegal, malafide and against the principles of natural justice. It is further pleaded that the provisions of Central Civil Services (Temporary Services) Rules 1965 have no applicability in this case. The further stand of the applicant is that the order dated 5.10.2006 has not been passed by the appointing authority, but by an authority superior to the appointing authority, without giving an opportunity of hearing to the applicant. In that case he has been deprived of his right of appeal with the appellate authority. So, he has approached this Tribunal for the relief as prayed for.

5. All the respondents in their Counter have taken the stand that undue favour was shown to the applicant for his selection by one Dr. Rajveer Singh; the then Director, who also was found to have committed Irregularities and illegalities during his tenure, which revealed from a report of three members committee. It ^{was} ~~has~~ also found that though only one post of T-3 was advertised, three candidates were appointed including the applicant and no regard was paid to reservation policy. Besides the above factual aspects, it has further been pleaded by the respondents that during the

period of probation the applicant has been removed exercising powers under the provisions of Rule 5(i)(c) of "Termination of Services of a Temporary Government servant" and when the said order has been passed without casting any stigma on the employee, the provisions of Article 311 (2) of the Constitution of India are not attracted. It is further pleaded that the applicant having been accepted the terms & conditions that his services ~~will be available~~ can be terminated at any time ~~on~~ any reason now he ~~cannot raise any objection as he has no scope to raise objection~~.

6. The only question arises whether the termination of the services of the applicant while he was on probation can be terminated without assigning any reason and without giving opportunity to him?

7. During the course of arguments, learned counsel for the applicant has urged that the services of a probationer cannot be terminated arbitrarily or punitively without applying the principles of natural justice. The probationer is entitled to know about his deficit before his services is terminated under Rule 5 of CCS (Temporary) Services Rules. Reliance has been placed on the following case laws:-

- (i) V.P. Ahuja Vs. State of Punjab & Ors. (2000) 3 CC 239.
- (ii) Anoop Jaiswal Vs. Government of India & Another (1984) 2 SCC 369.
- (iii) 579 Swamy's CL Digest 1993 Manorama Devi (Smt.) Vs. U.O.I.

(iv) 163. Swamy's CL Digest 1995/1 Deepak Kr. Das Vs. U.O.I. & Ors.

8. On the other hand, it is argued on behalf of the respondents that the termination of service of a ad-hoc or temporary Government servant, if simplicitor in terms of contract of service and Rules and not being punitive then the provisions of Article 311(2) of the Constitution of India are not attracted and the applicant being on probation in this case, his services can be terminated at any time without assigning any reason. They have also placed reliance the following case laws:-

- (i) (1991) 1 SCC 691 in re. State of U.P. & Another Vs. Kaushal Kishore Shukla.
- (ii) (2002) 1 SCC 520 in re. Pavandra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences & Another.
- (iii) U.O.I. & Others Vs. A.P. Bajpai & Others (2003) 2 SCC 433.
- (iv) Om Prakash Mann Vs. Director of Education (Basic) & Others (2006) 7 SCC 558.

9. Admittedly, no reason has been assigned to the applicant before his termination. He has also not been asked to show cause for any of his deficiency ⁱⁿ ~~on~~ or ⁱⁿ unsatisfactory performance. Inquiry was made against the Director. No material has been placed before us that undue favour was extended to the applicant by the Director during the selection process. So, for the fault of the Director, the applicant cannot be penalized. Even if he was on probation he could have been asked about his conduct or for his performances. When that has not been

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done, we are of the view that there has been violation of principles of natural justice.

10. The impugned order^{is} dated 5.10.2006 under which the services of the applicant have been terminated in pursuance of proviso to Sub rule (i) of Rule 5 of the CCS (temporary Service) Rules, 1965. It is not the case that the services of the applicant have been terminated as per the terms & conditions of the appointment letter.

11. During the course of arguments a large number of case laws have been cited on behalf of both the parties. We are not inclined to burden the order by referring ^{to} all those decisions. The latest decision of the Apex Court on which reliance has been placed on behalf of the respondents ~~is~~ the case of **Om Prakash Mann reported in (2006) 7 SCC 558**. In that case inquiry was initiated against the probationer and he was dismissed from the service during the probation period. So it was held by the Hon'ble Apex Court that no opportunity is required to be given to the probationer and, therefore, question of violation of principles of natural justice does not arise. The case, in hand, the facts are different. No inquiry has been initiated against the applicant, so the ratio of the case cited would not be applicable in this case.

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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 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 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

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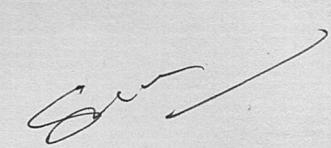
subject has held that the probationer to be made known of inadequacy/deficit affording him opportunity to improve before termination his services under Rule 5 of CCS (TS) Rules, 1995. The CAT Calcutta Bench in case of Dipak Kr Das Versus Union of India and Others reported in 163 Swamy Civil Digest 1995/1. 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.

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16. Hence the OA succeeds and is allowed. We are hereby quashing the order of termination dated 05.10.2006 and direct the respondents to take the applicant back in service forthwith treating him as continued.

17. There shall be no order as to costs.



MEMBER-J



MEMBER-A

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