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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 95 OF 1987

Date of decision: May, 31, 1991.

Surya Narayan Gouda Applicant
Versus

Union of India and others Respondents

For the applicant : Mr. K.B.Panda, Advocate.

For the Respondents : ~~Ms.~~ C.V.Murty, and C.M.K.Murty
Advocates.

C O R A M :

THE HON'BLE MR. B.R.PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be permitted to see the judgment? Yes.
2. To be referred to the reporters or not? *Yes*.
3. Whether Their Lordship's wish to see the fair copy of the judgment? Yes.

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JUDGMENT

B.R.PTEL, VICE CHAIRMAN: The applicant was working as a daily rated worker in the Regional Research Laboratory(RRL), Bhubaneswar since 1978. He was however, selected for a Group 'D' post and was appointed as a Junior Security Guard on the terms and conditions enclosed to the Office Memorandum dated 24.3.1983, a copy of which is at Annexure-3 which he had accepted. He joined the Post on 25-3-1983 vide Annexure-3. According to Clause-II of the terms and conditions he was put on probation for a period of one year from the date of appointment to be extended or curtailed at the discretion of the Competent Authority. His services were however, terminated vide O.M. No. 2/532/83-Estt. dated September, 23, 1986 (Annexure-4) with effect from 25-9-1986. Being aggrieved with this order the applicant has moved the Tribunal in this application for appropriate orders quashing the impugned order (Annexure-4) and directing respondents 2 and 3 to absorb him in the post of Junior Security Guard w.e.f. 25.9.86 i.e. the date of termination of his

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service.

2. The Respondents have maintained in their counter that the appointment of the applicant was subject to his satisfactory completion of the period of probation and it was specifically laid down in the terms and conditions that during the period of probation extended or otherwise the appointment might be terminated at any time without notice and without any reasons being assigned. As the applicant failed to complete the probation satisfactorily despite the period being extended, his services had to be terminated vide orders at Annexure-4. As the services of the applicant has been terminated according to the terms and conditions of the appointment and as he had been given adequate opportunity to improve his work and conduct during the probationary period, the applicant need have no grievance and the Tribunal should not interfere with the orders passed by the Competent Authority.

3. We have heard Mr. K.B.Panda the learned Counsel for the applicant and Mr. C.M.K. Murty the learned Counsel for the Respondents and perused the relevant records. Mr. Panda has contended

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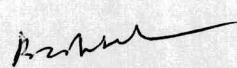
that the employee should have been given proper opportunity to face/to defend himself in an enquiry if his conduct was unsatisfactory during the period of probation. According to him in the present case no show cause notice had been given to the applicant relating to his work and conduct and the post of Junior Security Guard being a permanent post the respondents have no right to terminate his service without following the rules and procedures. Mr. Panda has further said that according to Clause-III of the terms and conditions of appointment, the applicant was to be given one month's notice before terminating his service. Mr. Panda has further contended that termination of the applicant's services was discriminatory inasmuch as persons Junior to him were continuing as Junior Security Guards and that the impugned order has been passed with a mala fide intention of respondent No.2 i.e. Director, Regional Research Laboratory, Bhubaneswar because he did not agree to do the personal work of the Administrative Officer. In short, Mr. Panda has contended that the applicant had been working very satisfactorily and termination of his service has been illegal and as such should be set aside.

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On the other hand Mr. Murty has maintained that a month's notice was required to be given under Clause-III of the terms and conditions of appointment after the employee has completed the probation period satisfactorily. We have gone through this condition and have noted that it is only after the satisfactory completion of the probationary period that the appointment might be terminated at any time by a month's notice given by either side. The appointing authority however, had the right of terminating the services of the appointee forth with on paying the appointee a month's salary and allowances in lieu of the notice. The plea of Mr. Panda on this account is therefore, not accepted.

4. Mr. Murty has taken us through the Annexure-D series i.e. From D(i) to D(vi). These are copies of the reports the applicant had earned on his work and conduct. In Annexure-D(i) which covers the period of six months from 25-3-84 we find that the applicant has been found to be 'Irresponsible and Indisciplined during the duty hours'. It has been mentioned that he was not fully devoted to his duty.



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In regard to attendance it has been mentioned that he is very irregular in maintaining punctuality and he is not fully devoted to his duty. In this report a recommendation has been made to extend the period of probation for a period of another six months in order to enable him to mend his ways. Annexure-D(ii) is the performance record of the applicant for year ending 31-3-1984. Though there is no improvement noticed in regard to his amenability to discipline, honesty and integrity which have been assessed to be Satisfactory and he was worked punctual his devotion to duty was found that not satisfactory. During this period he was found very arrogant and disrespectful to his superiors. The adverse remarks were communicated verbally. The Confidential Report on the work and conduct of the applicant for the year ending was not satisfactory as he was found to be indisciplined, not fully devoted to duty and not punctual and his devotion to duty not upto mark. The general assessment of personality character and temperament was also unsatisfactory. The adverse remarks have been communicated to the applicant vide O.M. dated November, 19, 1985 vide Annexure-D(iv) in order to indicate to him the 'areas in which his work and conduct need improvement so that he may make due efforts to rectify the same in future'.

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It has also been mentioned in this Memorandum that the applicant should make his representations if any within one month from the date of receipt of the Memorandum. There was however, no noticeable improvement in the work and conduct of the applicant as is found from Annexure-D(v). Under general assessment of personality character and temperament, it has been mentioned that inspite of repeated instructions and guidelines there has been no improvement in performance of his duty and dealings with coworkers and superiors. The reporting Officer, therefore, recommended for extension of his probationary period. Annexure-D(vi) is a copy of the Confidential report on the work and conduct of the applicant in the year ending 31-1-1986. Here too the applicant has been found to be indisciplined, not punctual, not fully devoted to duty. He was also found dishonest. Under general assessment of personality etc. it has been noted that the applicant had not improved his standard inspite of repeated and regular advice and instructions and that the applicant was arrogant and indisciplined. Annexure-E series contained the special reports on the work and conduct of the applicant. Annexure-E shows that there was slight improvement in his performance and activities but not upto the mark. His dealing with the superiors still need further improvement. This report is dated

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5-5-1986 given by the Security Assistant. In the report dated 5-6-86 (Annexure-E(i)) the Spl. report shows that the standard of work rendered by the applicant was not satisfactory, and his punctuality and alertness were not upto the mark and his behaviour towards his superiors is not satisfactory. The Spl. report dated 4-7-86 (Annexure-E(ii)) it has been mentioned that his negligence of work is marked and his standard deteriorating day by day and that inspite of repeated warning he has no interest to improve his ability and standard. His behaviour needs much improvement. A copy of the Spl. report dated 5.8.86 is at Annexure-E(iii). This also refers to his unsatisfactory performance and behaviour.

5. From these Annexures we have noticed that the Spl. reports were being submitted by the Competent Authority because of instructions in O.M. No.3/352/83-Estt. dated 4.4.1986. We have also noticed OM dated 4.2.84 (Annexure-F(i)) under which the applicant was advised to be more careful in the discharge of his duties in future and to show devotion to duty, failing which he will be liable for disciplinary action. This also says that inspite of repeated instructions he was not alert while on duty. The reports dated 21.3.1984 (under Annexure-F(ii)) shows that the applicant and another were found sleeping behind the workshop in the

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night instead of doing their duty. By OM dated 29.3.84 (Annexure-F (iii)) the applicant has been informed that the Director, RRL had taken a serious view of the lapses of the applicant for not being alert and having slept on 21.3.1984 while on duty. He was directed to explain the circumstances under which he conducted himself in the manner indicated above and to show cause why disciplinary action should not be taken against him. The applicant submitted a written explanation that he and his colleagues were performing their duties throughout in the night very attentively and that they did not sleep at night on 21.3.1984. On this the security Assistant vide his note dated 14.4.1984 has written as follows:-

"Always I have guided the Security Staff to be alert in their duties. Instead of mending their habits and to improve their performance they are found to be more negligent. Personally I caught Shri S.N. Gouda while he was sleeping on the Ramp of the Monorail Beneficitation shed and recorded my findings of surprise check in the register kept at the Varandha of the Director's Residence. His explanation is completely false. This note has been submitted to higher Authority".

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His explanation was also called for by OM dated 16-7-1984 for dereliction of duties Annexure-F(viii). the OM dated 17.7.1984 Annexure-F(ix) has extended his probationary period by six months with effect from 25.3.1984. He was advised again to be more careful in his duties, to desist from such misconduct and to show devotion to duty. He is further advised, in his own interest, to show marked improvement in his conduct and duties vide OM dated 17.7.1984 (Annexure-F(x)). His explanation was again called for not doing his duty properly vide OM dated 12.9.1989 (Annexure-F(xii)). He was again asked to explain for misconduct amounting to insubordination by OM dated 24.10.1984 vide Annexure-F(xiii). The Office Memorandum dated October, 30, 1984, Annexure-F(xiv) has found his explanation neither convincing nor satisfactory. He was therefore, severely warned against insubordination, dereliction of duty and was asked to be more careful in his duties as well as in his dealings with his superiors in future. His probationary period was again extended by six months more vide OM dated 23-11-1984 (Annexure-F(xv)). He was given another opportunity vide OM dated November, 26, 1984 (Annexure-F(xvi)) to improve his conduct and work and further opportunity by OM dated 22.4.85

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Annexure-F (xviii) to improve his work and conduct. His probationary period was extended again by six months from 25.3.85 to 24.9.85 vide OM dated 9.7.1985 (Annexure-F (xx)). His services were terminated by OM dated 13.3.1986 (Annexure-G) but this order was kept in abeyance by OM dated 14.3.86. On consideration of the representation made by the applicant, the Director, RRL, respondent No.3, decided to afford as a very special case, another and final opportunity to the applicant to improve his work and conduct and extended his probation from 25.9.85 till 30.9.86 in supersession of the termination order dated 13.3.1986 i.e. Annexure-G and the Director ordered that the work and conduct of the applicant should be watched during this period. Annexure-K and L shows the applicant's conduct and negligence of duties by sleeping at night instead of doing the guard duty and finally the Director approved the termination of services of the applicant vide OM dated September, 23, 1986 (Annexure-P) which is Annexure-4 to the application i.e. the impugned order.

6. The above account would indicate that the applicant has been given adequate opportunity by the respondents to improve his work and conduct. His probation has been extended on more than one occasion and he has been asked both verbally and in writing

from time to time to improve his work and conduct.

He was given opportunities from time to time to improve the quality of his work and conduct. Termination of his service was cancelled as a special case by the Director Inorder to give a last chance to the applicant. When all this did not have any effect on the work and conduct of the applicant, the respondents had no alternative but to terminate his services in accordance with Clause-II of the terms and conditions of appointment. The Respondents have given more than adequate opportunity to the applicant and on this account we cannot fault their action. There is no evidence of mala fide or bias on the part of the Director or the administrative officer. On the other hand, there are records to show that they have been indulgent towards the applicant. The termination order does not attach any stigma to the applicant. It is simply termination of his service as per clause-II of the terms and conditions of his appointment. Termination of service on the grounds of unsatisfactory probation is not a penalty for which a disciplinary proceeding would have to be instituted.

7. Even for employees of Central Government termination of service owing to unsatisfactory work and

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conduct during probation would not amount to penalty under explanation to rule-II of the CCS (CCA) Rules and as such it is not necessary to institute a disciplinary proceedings and cause elaborate enquiry before terminating the service. The order of appointment Vide-Annexure-3 and Annexure-C is afresh appointment and it cannot be construed as a continuation of the service of the applicant as a daily rated worker and as such **he** cannot be treated as Senior to those who joined the service of RRL as Casual Workers later than the applicant. Moreover the impugned order has been passed in accordance with the terms and conditions of the appointment of the applicant after giving **him** morethan adequate opportunities. As such we are unable to accept the plea of Mr.Panda that the services of the applicant cannot be terminated as his juniors still continues as Junior Security Guard in the Office of RRL.

8. For the reasons mentioned above, we find no merit in the application which stands dismissed leaving the parties to bear their own costs.

Abu Sarfraz
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MEMBER (JUDICIAL)



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VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack: K.Mohanty.