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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 53 OF 1999

Cuttack, this the 28th day of June, 1999

Shri Naba Kishore Das .... Applicant

Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
28.6.99

CENTRAL ADMINISTRATIVE TRIBUNAL * SEAL OF THE CUTTACK BENCH

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 53 OF 1999
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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Shri Naba Kishore Das,
aged about 40 years,
son of late Biswanath Sitha,
Security Officer,
Central Rice Research Institute,
Bidyadharpur, Cuttack-753 006 .... Applicant

Advocates for applicant - M/s Aswini K.Misra
J.Sengupta
B.B.Acharya
PRJ Dash

Vrs.

1. Union of India, represented through
the Secretary to Government,
Ministry of Agriculture,
Krishi Bhawan, New Delhi.
2. Director, Central Rice Research Institute,
Bidyadharpur, Cuttack-753 006.
3. Senior Administrative Officer,
Central Rice Research Institute,
Bidyadharpur, Cuttack-753 006....Respondents

Advocates for respondents - M/s Ashok Misra
H.P.Rath
S.C.Rath

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents for withdrawing the order dated 11.2.1999 (Annexure-2) and for a further direction to the respondents to allow the applicant to work in his post. It has also been prayed that the order at Annexure-2 should be quashed and the applicant should be reinstated in his post with all consequential financial and

service benefits and with costs. By way of interim relief it was prayed that the order at Annexure-2 should be stayed. The prayer for interim relief was disposed of in order dated 15.2.1999. The prayer for staying the impugned order dated 11.2.1999 was rejected but it was ordered that the petitioner should not be evicted from the quarter which is occupied by him.

2. Facts of this case, according to the petitioner, are that he was released from Air Force after completing fifteen years of service and was selected and appointed as Security Officer in Central Rice Research Institute (CRRI), Cuttack, which he joined on 3.5.1995. According to the terms and conditions of appointment, his appointment was liable to be terminated without assigning any reason by one month's notice on either side under Rule 5 of Central Civil Service (Temporary Service) Rules, 1965. It is stated that the services of the applicant were terminated all on a sudden in order dated 11.2.1999 without notice and without giving an opportunity to show cause. It is stated that the contents of the notice of termination attach a stigma and the principles of natural justice have been violated and therefore, the impugned order is liable to be quashed. It is also stated that the impugned order is arbitrary and capricious and has been issued mala fide. It is further submitted that the order being punitive in nature the respondents should have given opportunity to the applicant to defend himself as required under Article 311 (2) of the Constitution. On the above grounds, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant was working in Indian Air Force in Clerical cadre as he entered Air Force with Matriculation qualification and his initial grade was Clerk (GD). He was

selected as Security Officer, CRRI and offer of appointment was issued to him in letter dated 1.4.1995 clearly stating that he may join the post if all the terms and conditions are acceptable to him. The applicant voluntarily accepted the terms and conditions, and joined the post on 3.5.1995. According to Clause (5) of the terms and conditions of the offer of appointment which is at Annexure-1 the applicant would be on probation for a period of two years extendable at the discretion of the competent authority. It was also provided that failure to complete the period of trial to the satisfaction of the competent authority will render him liable to be discharged from service. Clause (6) also provided that his appointment may be terminated without assigning any reason by one month's notice on either side under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 which are applicable mutatis mutandis to the employees of the Indian Council of Agricultural Research (ICAR) under which CRRI is a research institute. The respondents have stated that the applicant's termination of service has been dealt with in accordance with the terms and conditions of the offer of appointment and as such his contention about not dealing his termination in accordance with Rule 5 of CCS (Temporary Service) Rules,1965 does not arise and therefore no notice was required to be issued to him. But the competent authority following the principle of natural justice had given him chance and opportunity to submit his explanation, by issuing a Memo which is at Annexure-R/1. The reply of the applicant is at Annexure-R/2 series, and the order issued to the applicant on 6.2.1999 after considering his explanation is at Annexure-R/3. In view of the above, the respondents have stated that the order of termination at Annexure-2 to the OA has not been issued all on a sudden

without notice and without giving an opportunity to the applicant to show cause. It is stated that during his period of probation the applicant has been verbally briefed on a number of occasions about his deficiencies by the Director in his Chamber in the presence of the Joint Director and Senior Administrative Officer, and has been advised to understand his job and function in the interest of the institute. But in spite of such advice and in spite of memo and warning issued to the applicant to correct his character and work for the interest of the institute, no change was noticed. The respondents have tolerated the applicant for as long as four years and have given him sufficient opportunity to prove his suitability for further retention in service. But in spite of that, the applicant has not imporved and has only created problems for the authority. The respondents have listed out the complaints and deficiencies observed in the work and conduct of the applicant in their counter. It is stated that the applicant was chargesheeted under Rule 14 of Central Civil Services (Classification, Control & Appeal)Rules, 1965 for misconduct and after the charges were proved, his pay was reduced to the initial stage of the grade for a period of one year without cumulative effect. The applicant misbehaved with Shri Tushar Das, Inspector of Police, Cuttack, for which a criminal case was filed against him in Chauliaganj P.S.Case No. 89, dated 21.6.1995 and the Director of CRRI had to intervene to settle the matter. The applicant had stolen mangoes from the Institute's trees near his residential quarters in spite of objection raised by the official who stays in the nearby quarter. He should have taken the mangoes only after obtaining permission from the competent authority. There has been large scale grazing

of research crops by stray animals. Besides, the anti-social elements have cut the branches of many trees inside the campus. The applicant could neither prevent such incidents nor did he report the same to the higher authorities. Such incidents occurred mainly due to wrong deployment of security guards. The applicant issued verbal instruction to the Security Supervisor to retain the cheques issued by the office to the security agency without approval of any authority. As a result complaints were made regarding non-payment of security charges. Dr.(Col.) C.Nath, Chief Administrator-cum-Director, X-Security Services, Bhuaneswar, has alleged that the applicant has demanded extraneous benefits from the agency and the security guards in addition to threatening the Agency that the contract will be cancelled. He issued large number of movement orders and changed almost all the security guards resulting in total collapse of security system. He had forced the Security Guards to work at his residence during duty hours. The applicant along with a Security Guard entered the residence of Shri Charan Naik, T.I., harassed and threatened his family members. Before conducting the search in the residence he should have contacted the police and should have obtained approval of senior officers. Even though he has been provided with a motor-cycle for patrolling, he never made surprise check during night hours. As a result the Security Guards became lethargic and slept resulting in theft in the campus. In spite of verbal orders of the Senior Administrative Officer to allow the lady Security Guards to enter the campus to come to the office to meet the Senior Administrative Officer and Joint Director on 23.8.1996 and 24.8.1996, the applicant refused to allow them to enter the campus resulting in unnecessary

embarassing situation. In spite of all this, the applicant was reminded about his lapses and he was informed that his overall performance was not at all satisfactory and he was advised to take steps to improve his performance. This memo is dated 28.8.1996. On receipt of the memo, the applicant directly sent a FAX to Director-General, ICAR and Secretary to Government of India, Department of Agricultural Research & Education and outraged the modesty and morality of the Senior Administrative Officer and his guests who visited him in residence, besides bringing in allegation of alcoholism, womanisation, bribery, etc. This is a serious offence. In case the applicant had any charge against the Senior Administrative Officer, he should have submitted the same in writing to the Director,CRRI, instead of sending a FAX to Director-General,ICAR. The respondents have stated that whenever any irregularity or deficiency is noticed in the work of the applicant and the applicant is informed of the same, instead of improving the applicant immediately brings in baseless charges against his higher authorities. It is further stated that in his letter dated 29.11.1997 addressed to Senior Administrative Officer he has used threatening language which is totally unbecoming. It is further stated that on 19.8.1997 the applicant created problems with Shri P.C.Das, Scientist. The complaint given by Shri P.C.Das is at Annexure-R/7. The applicant caused harassment to all the chowkidars and the representations received from the Chowkidars are at Annexure-R/8 series. He is not amenable to discipline and does not care for the orders of the higher authorities. A copy of the note of Director, CRRI, addressed to the applicant is at Annexure-R/9. A memo was also issued to the applicant on 7.2.1998 which is at Annexure-R/10. All these facts against the applicant have been reported to the higher authorities of the Council by

CRRI in the letter at Annexure-R/11. It is further stated that M/s Sneba Security Services was awarded security contract from July 1997 to August 1998. The agreement with the security agency was that they would provide forty security guards and three security supervisors. The guards should only be ex-Army personnel and should not exceed 45 years of age. The security agency did not deposit the security money, failed to deploy the required number of security guards in any month, and deployed guards who did not belong to Army and guards who are over 45 years of age. The applicant was a signatory to the agreement and was aware of the terms and conditions, but he did not enforce the same in total disregard of the terms and conditions of the agreement. He allowed the security agency to carry out the security duty with much less number of security guards than the required number by alloting them extra shift duty, even upto three shifts a day. The applicant also allowed guards to perform duty who are more than forty-five years of age and even 60 years of age and who have been discharged from police forces on disciplinary grounds. He regularly processed and passed the bills of the agency and never brought these facts to the notice of higher authorities. When the attendance of the guards was verified, only 17 guards were found available out of 40 guards. He was asked to explain all these in letter dated 7.2.1998 at Annexure-R/12. In his reply at Annexure-R/13 which was couched in intemperate language, the applicant tried to avoid his responsibility. Besides, he again recommended the name of M/s Sneba Security Services for award of security contract in 1998-99 against the decision of other three members of the Committee. The respondents have stated that when a major penalty under Rule 14, extension of probation on two occasions and advices and warnings on several occasions did not bring any change in the character and attitude of the

applicant, the respondents have no other option except to terminate his services in accordance with the terms of the offer of appointment. The applicant later on admitted his mistakes in his letter dated 11.2.1999 at Annexure-R/4. On the above grounds, the respondents have opposed the prayer of the applicant.

3. We have heard Shri Aswini Ku. Mishra, the learned counsel for the petitioner and Shri Ashok Mishra, the learned counsel appearing for the respondents, and have also perused the records.

4.Learned counsel for the petitioner has made two submissions. His first submission is that in the impugned order dated 11.2.1999 at Annexure-2 the services of the applicant have been terminated with immediate effect under Clauses 5 and 6 of the terms and conditions of the offer of appointment on the ground of his misconduct, inefficiency and unsuitableness for the post. It has been stated that even though the petitioner was on extended probation at the time of issuing of the above order, the order itself is stigmatic in character and therefore, without initiating disciplinary proceeding against him and without giving him all reasonable opportunity to show cause against the lapses alleged against him, the above order of termination, which is punitive in nature, should not have been passed. The second ground urged by the learned counsel for the petitioner is that the impugned order has been purportedly issued under Clauses 5 and 6 of the terms and conditions of offer of appointment which is at Annexure-1. Clause 5 of the terms and conditions of offer of appointment lays down that he will be on probation for a period of two years which may be extended at the discretion of the competent authority, and failure to complete the

period of trial to the satisfaction of the competent authority will render him liable to be discharged from service. Clause 6 of the terms and conditions of the offer of appointment lays down that his appointment may be terminated without assigning any reason by one month's notice on either side under Rule 5 of the Central Civil Services (Temporary Service)Rules, 1965 as applicable mutatis mutandis to the employees of the Council. During the period of probation, however, the appointing authority may terminate the service of the applicant without notice and without payment of salary in lieu thereof. It has been stated that one month's notice or pay in lieu of notice has not been given to him at the time of issuing the impugned order, as required under clause 6 and therefore, the order of termination is liable to be quashed.

5. The second submission of the learned counsel for the petitioner is taken up first.The applicant is not a temporary employee of the Institute. He is on probation. Clause 6 no doubt provides for termination of his service without assigning any reason by giving one month's notice. But the same condition also lays down that during the period of probation his service can be terminated without notice and without payment of salary. Thus, absence of one month's notice or non-payment of salary in lieu thereof will not by itself invalidate the impugned order of termination because under Clause 5 his service can be terminated and he can be discharged from service without giving any notice and this is also provided in clause 6. This contention of the learned counsel for the petitioner is, therefore, held to be without any merit and is rejected.

6. With regard to the first submission of the learned counsel for the petitioner that the impugned order of termination is punitive in nature and it carries a

stigma and no opportunity has been given to the applicant to show cause in respect of the lapses alleged against him, it has been submitted by the learned counsel appearing for the respondents that the applicant's work and conduct during the period of probation were found unsatisfactory, a major penalty proceeding was initiated against him, and a punishment was imposed reducing his pay for one year without cumulative effect. He was also issued warning on many times requiring him to improve his work, performance and conduct but without any result. As regards opportunity of showing cause it has been submitted by the learned counsel for the respondents that in letter dated 14.12.1998, which is at Annexure-R/1, the lapses of the applicant with regard to the work of M/s Sneba Security Services who had the security contract from July 1997 to August 1998 ~~the lapses of the applicant~~ were communicated to him and it was indicated that under the above circumstances it is difficult to certify the integrity of the applicant and allow his further retention in Council's service. The petitioner was given an opportunity to explain within fifteen days why his service will not be terminated because of his inability to protect the interest of the Institute against that of a contractor. The applicant submitted an explanation on 28.12.1998. Apparently, a further letter was issued to him on 13.1.1999 and he submitted a further explanation in his letter dated 16.1.1999. These two letters dated 28.12.1998 and dated 16.1.1999 are at Annexure-R/2 series. After considering these two explanations, Director of the Institute issued letter dated 6.2.1999 at Annexure-R/3 in which after elaborate discussion his explanation was found unsatisfactory and it was noted that the applicant has continued to follow the path of insubordination,

confrontation with superiors when drawbacks and deficiencies were pointed out and has failed to improve in spite of several advices by superiors. The penalty was imposed on him in order dated 24.5.1997 at Annexure-R/4 and from this it appears that before issuing this order of punishment, his explanation was obtained and considered. Again a memo was issued to him on 29.11.1997 at Annexure-R/5 in which it was pointed out that under the rules he should not have submitted his representation to Secretary, ICAR and he was warned to be more careful in future. In response to this memo dated 29.11.1997 the applicant submitted a letter dated 1.12.1997 (Annexure-R/6) in which he justified his action and demanded that memorandum dated 29.11.1997 should be withdrawn forthwith, otherwise he will be forced to take further action against causing repeated harassment to him. From a perusal of all these records it does appear that during the period of probation of the applicant, which was extended twice, his work and conduct were not found satisfactory and besides drawing up of proceedings and imposition of penalty, his explanations had been called for on many occasions. It is also noted that in his letters addressed to the superior officers, the applicant has adopted a combative attitude. All these have been urged by the learned counsel for the respondents who has stated that at every stage the applicant has been given opportunity to explain his conduct and has been advised to improve his work, performance and attitude, but without any result. It has been submitted by the learned counsel for the petitioner that the impugned order dated 11.2.1999 is punitive in nature and before issuing this order, the applicant should have been given reasonable opportunity to show cause. In support of his contention, the learned counsel for the petitioner has

relied on a series of decisions. These are indicated below:

(i) State of Bihar and others v. Shiva Bhikshuk Mishra, AIR 1971 SC 1011;

(ii) Shamsher Singh v. State of Punjab and another, AIR 1974 SC 2192;

(iii) The Manager, Government Branch Press and another v. D.B.Belliappa, AIR 1979 SC 429;

(iv) Anoop Jaiswal v. Government of India and another, AIR 1984 SC 636;

(v) Amiya Charan Jena v. Managing Director, Orissa Handloom Development Corporation Ltd., 1997 (1) OLR 506;

(vi) Life Insurance Corporation of India and another v. Raghavendra Seshagiri Rao Kulkarni, 1997 AIRSCW 4306;

(vii) Rajasthan Adult Education Association and another v. Kumari Ashoka Bhatacharya and another, 1997 AIR SCW 4316;

(viii) Radhey Shyam Gupta v. U.P.State Agro Industries Corporation Ltd. and another, AIR 1999 SC 609; and

(ix) Dipti Prakash Banerjee v. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta and others, 1999(2) SUPREME 34.

It is not necessary to go into the facts of all these cases because the position of law in the regard of termination of service of a probationer has been well settled by a series of decisions of the Apex Court and it is only necessary to state briefly the law as it stands today. An employee who is on probation is on trial as it were. His work and performance have to be seen during the probation and if the same is found unsatisfactory, then the employer can either extend his period of probation or terminate his service in terms of the conditions of his appointment as probationer. The learned counsel for the petitioner has cited several cases, the Full Bench decision of the Hon'ble High Court

of Orissa being one of them where the probation period was over and it was not further extended and the legal status of the employee became a subject-matter for determination by Courts. These cases are not relevant for the present purpose because in the instant case the probationary period of the applicant has been actually extended and the impugned order of termination has been issued during the extended period of probation. The position of law is also well settled that services of a probationer can be terminated by a simple order without attaching any stigma to him. In such a case the order of termination cannot be taken to be punitive in nature. Courts have, however, held that the order may be an order of termination simpliciter but the circumstances leading to issuing of the order may prove that it is in effect an order of punishment which is essentially punitive in nature and for which the employee is entitled to have the benefit of the safeguards of Article 311 of the Constitution. Thus, the position is that even in a case of simple termination of service of the probationer Courts can go beyond the order and see the preceding circumstances to determine whether the order is punitive in nature or not. In the case of **Shiva Bhikshuk Mishra (supra)**, who was of course not a probationer but was holding the substantive post of Sergeant, the Hon'ble Supreme Court held that the impugned order need not necessarily refer to the stigma attributable to the conduct of Government servant. The circumstances attendant on the impugned order are relevant for determining whether it was made by way of punishment or administrative routine. At the same time it is also the legal position that for the purpose of determining if the work and conduct of the probationer are satisfactory for the purpose of declaring that he has completed his probation satisfactorily, the employer is entitled to make such enquiries as he considers

necessary and that in such enquiry principles of natural justice will not be attracted. The Hon'ble Supreme Court have held that if after such enquiry a simple order of termination is issued, then the true test for deciding whether the simple order of termination is punitive or not is to determine whether such enquiry is merely the motive for issuing the order of termination or is the foundation basing on which the impugned order of simple termination has been issued. As early as in the case of Parshottam Lal Dhingra v. Union of India, AIR 1958 SC 36, the Hon'ble Supreme Court held that if the misconduct of the employee was the motive, then the order was not punitive. But if it was the foundation, the order was punitive. To put in another way, it was held that misconduct, negligence, inefficiency or other disqualification might be the motive or the factor which influenced the employer to take action under the terms of the contract of employment or the specific service rules and in that case motive was irrelevant. But if termination was founded on misconduct, negligence, inefficiency or other disqualification, it would be treated as a punishment. In **Samsher Singh's case (supra)** all previous decisions on this point were examined and the Hon'ble Supreme Court held that if going by the attendant facts and circumstances, it is found that the order of termination is by way of punishment, then opportunity must be provided to the employee to defend his case. It is not necessary to refer further to the decisions cited on this point. In **Radhey Shyam Gupta's case (supra)** again the earlier decisions were examined by the Hon'ble Supreme Court and the test of examining the attendant circumstances for determining whether lapses proved are the motive or foundation of the order of simple termination was reiterated. The matter was again examined in the more recent case of **Dipti Prakash Banerjee (supra).** In the

instant case the impugned order of termination is not one of termination simpliciter. In the order of termination it has been inter alia mentioned that services of the applicant, who is under probation, are terminated on the grounds of his misconduct, inefficiency and unsuitableness for the post. Thus, this order on the face of it is punitive in nature because the order itself indicates that it has been issued because of the applicant's misconduct and inefficiency. So far as the ground of unsuitableness of the applicant for the post against which he has been retained as probationer is concerned, unsuitableness for a particular post by itself is not stigmatic because it would not spoil the chance of the applicant for getting any other job. But so far as misconduct and inefficiency are concerned, the very mention of this in the impugned order of termination makes it stigmatic and the order punitive in nature. Before passing such an order, proceedings therefore should have been drawn up against the applicant, which has not been done.

7. It has been submitted by the learned counsel for the respondents that for his various lapses explanations have been called for from him and these have been found unsatisfactory. But merely calling for explanation would not satisfy the requirement of reasonable opportunity and principle of natural justice. For issuing a termination order, which is by way of punishment, charges should have been drawn up against the applicant and he should have been given all opportunity as provided under the relevant service rules to prove his innocence vis-a-vis the charges.

8. In view of the above, we hold that the impugned order dated 11.2.1999 at Annexure-2 is punitive in

nature and hence not sustainable under the facts and circumstances of the case as discussed by us above. The order dated 11.2.1999 is therefore quashed and the respondents are directed to reinstate the applicant to his status of probationer within a period of 30(thirty) days from the date of receipt of copy of this order with all attendant service benefits. We however make it clear that the respondents will be free to proceed against the applicant in accordance with the terms and conditions of his appointment, if they are so advised.

9. In the result, the Original Application is allowed in terms of the observation and direction above but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

28.6.99

AN/PS