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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.268/2004

Date of decision: 21-6-2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Hon'ble Mr. V. K.Kapoor, Administrative Member.

Bheek Singh, S/o shri Akhey Singh aged 41 years, r/o village Mohangarh, District Jaisalmer, Ex- Mazdoor, 26 Ammunition Company, Jaisalmer.

: Applicant.

Rep. By Mr. Vijay Mehta : Counsel for the applicant.

Versus

1. Union of India, through the Secretary, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Officer Commanding, 26 Ammunition Company, Jaisalmer.
3. Director General Ordnance Services, Army Headquarters, New Delhi.
4. Lt. Col. H.K. Gulati, 5, Mountain Division, C/o 99 APO.

: Respondents.

Rep. By Mr. M. Godara proxy counsel for
Mr. Vinit Mathur : Counsel for the respondents.

ORDER

Per Mr. V.K. Kapoor, Administrative Member.

Shri Bheek Singh, S/o Shri Akhey Singh aged 41 years, r/o village Mohangarh, District Jaisalmer, Ex- Mazdoor, 26 Ammunition Company, Jaisalmer, has filed the present O.A against the orders dated 20.11.2003 (Annex. A.1) and dated 02.5.2003 (Annex. A.2), terminating his services with effect from date of expiry of one month from the date of receipt notice. The applicant has prayed for the following reliefs:

" that the impugned orders Annex. A.1 and Annex. A.2 may kindly be quashed and the applicant be reinstated with consequential benefits. Any other order, as deemed fit giving relief to the applicant may kindly be passed. Costs may also be awarded to the applicant."

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2. The factual matrix of the case is that the applicant is an ex-serviceman. After due selection he was appointed as Mazdoor in 26 Ammunition Company vide order dated 01.5.2002, (Annex. A.3) on probation for a period of two years on the basis of terms and conditions mentioned therein. The applicant was posted under respondent no.4, Commanding Officer, who put undue pressure on the applicant to act as his agent for collecting Rs. 60,000/- each candidate who were applied for the post of mazdoor. Respondent no.4 also wanted him to involve the applicant in his illegal gratifications; the applicant did not oblige to him, he threatened to terminate his services. The applicant informed the senior officers in regard to the illegal activities of respondent no. 4 vide his letter dated 19.11.2003 (Annex. A.4). The respondent No. 2 vide order dated 02.5.2003 (annex. A/2) terminated the services of the applicant as he was abstaining from duty quite often. As per Annex. A.5, the order Annex.A.2 was not duly served upon him. The applicant submitted a representation on 12.12.2003 (Annex. A.6) to the Sub Area Commander. The order of his termination /dismissal was served upon his brother. The applicant submitted representations to the higher authorities about the nefarious/malafide activities of respondent No. 4 (Annex. A.7 to A.11). There was no clerk in the office and the applicant was asked to discharge the duties of clerk though he was appointed as mazdoor. On the basis of his representations a court of enquiry was ordered against respondent no. 4 and he was transferred on 08.01.2004. The contention of the applicant is that he has been terminated in a mala-fide way. Even though certain charges were leveled against the applicant no inquiry was conducted. No reason was adduced as to why Annex. A.1 was issued after a period of six months

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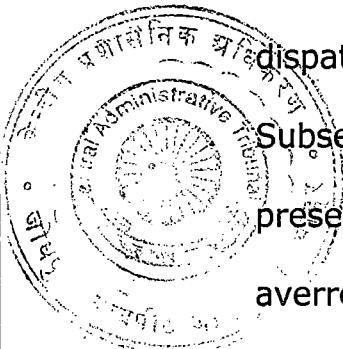
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when Annex. A.2 was not at all withdrawn. His services could have been terminated, after enquiry, during the probation period in case he was found not suitable. The applicant has prayed that the impugned orders Annex. A.1 dated 20.11.2003 and A.2 dated 02.5.2003 be quashed and set aside and he be reinstated in service with all consequential benefits.

3. (a) The learned counsel for the respondents 1 to 3 in reply has denied the averments made by the applicant. It is averred by the respondents counsel that the present O.A. is premature since the applicant has preferred an appeal before the competent authority on 06.10.2004 and the same was pending before the appellate authority and without waiting for the outcome of his representation he filed the present O.A. The applicant was recruited as Mazdoor. The offer of appointment specifically states that during the period of probation if the services of the applicant are found unsatisfactory then he can be terminated without notice. The respondents have contended that no such order dated 02.5.2003 was ever passed. The applicant was issued a notice dated 20.11.2003 as per rule 5 (1) of the CCS (Temporary Services) Rules, 1965. This termination order of 20.11.2003 was sent by registered post. Later another order dated 23.12.2003, was dispatched by registered post, but this was not served upon him. Subsequently the same was pasted on the house of the applicant in the presence of his brother Shri Prem Singh. The respondents have further averred that only two orders, dated 20.11.2003 and 23.12.2003, were only passed by the respondents relating to the termination of the services of the applicant; no such order of 02.5.2003 was passed;

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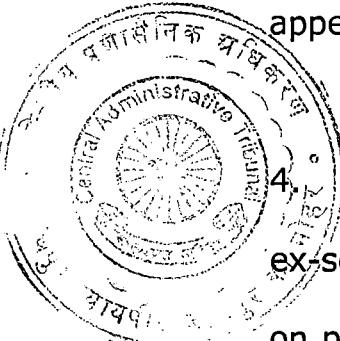
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applicant himself decided to leave the job as per his letter dated 19.11.2003 (Annex. R.1). The respondents have stressed the point that the applicant was rendering a helping hand to the nominated clerk L. NK. A.N. Thomar and they have never taken the work of clerk from the applicant. The respondents have further averred that the performance of the applicant was found unsatisfactory and he was blamed for using dilatory tactics and was discourteous to fellow workers. He started rumour mongering and inciting and conspiring with other personnel of his caste, thereby tried to create a rift amongst mazdoors and disturb the harmony and peace in-side the unit. Because of these reasons, he was terminated from service. The respondents have further stated that a court of enquiry was held between 27.4.2004 to 30.5.2004. It is stated that the offer of appointment clearly stipulates that his service conditions will be governed by the C.C.S. (Temporary Service) Rules 1965 and in compliance of the rules his services were terminated. They have prayed that as no case is made out by the applicant, the O.A filed by the applicant deserves to be dismissed.

3. (b) Though notice was issued to the fourth respondent, neither he appeared in person or through lawyer nor filed any reply on his behalf.

4. (a) The learned counsel for the applicant stated that he was an ex-soldier; he was appointed as Mazdoor as an ex soldier on 01.5.2003 on probation for a period of two years on temporary post; his services would be terminated by giving him one month's notice during any period of service, after probation. Though the applicant was recruited



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as Mazdoor, but he was working in a clerical post/capacity. During the period of probation, he was asked to do illegal work by respondent no. 4 who put an undue pressure on him. Applicant wrote to the senior officers, court of enquiry was held; respondent no. 4 was transferred in view of applicant's allegations. The charges were of serious nature; during probation period, applicant was dismissed from service vide letter/order dated 02 May, 2003 (annex. A.2) which was not said to be issued by respondents. The termination of applicant's services was made as per letter dated 20 Nov. 2003 (Annex. A.1); no reasons were given for issuance of letter dated 02.May 2003 (annex. A.2) by respondents. There was no report of posting by respondents no service on applicant was made; it was made on his brother because applicant was found unsuitable, he was terminated from service during probation period. There is no office order regarding taking work of clerk from a mazdoor. Applicant leveled charges/allegations against respondent No. 4. There was no rebuttal from the respondents' side; no record produced in the matter. Termination of applicant is not made out as per rules; service of termination order made on his brother on 09.01.2004. Applicant appealed against the order of termination that was decided on 24.5.2005. Applicant made representation on 06.10.2004 (p.30-31 /C); A probationer cannot be removed in an arbitrary manner. In support of his contention, the learned counsel for the applicant relied on a judgement of the Hon'ble High Court of Rajasthan at Jodhpur in the case of **Rajendra Kumar vs. Chairman of Rajasthan Roadways.** [2008 (119) FLR 296]

(b) Learned counsel for respondents 1 to 3 in reply has stated that the present O.A is premature and is not maintainable. There was a

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show cause notice of and order of termination on 23.12.2003; appeal was filed by the applicant on 06 Oct. 2004 that got rejected on 24 May 2005, the respondents 1 to 3 filed an additional affidavit confirming their view point, no amendment was made by the parties later in O.A and its reply. The applicant filed O.A on 25.10.2004; appeal against the termination order Nov. 2003 filed before the competent authority on 06.10.2004. This is an admitted fact that the applicant was a probationer on whom CCS (temporary services) Rules, 1965 would not apply. During applicant's probation period itself, because of his dilatory tactics, rumour mongering, creating rift amongst the mazdoors, show cause notice was served upon him. The dismissal order of applicant was served upon his brother. Applicant's services were terminated because of his wrong deeds, the termination of his temporary services during probation period did not require notice, thus, the applicant is not entitled to get protection under Art. 311 (2) ;**Samsher Singh vs. State of Punjab and another** [AIR 1974 SC 2192]; the respondents have further relied upon the citations namely **Mathew P. Thomas vs. Kerala State Civil Supply Corp. Ltd and others.** [2003 AIR SC 1789]; **Kendriya Vidyalaya Sangathan vs. Arun Kumar Madhavrao Sindhhaye and Anr.** [AIR 2007 SC 192] whereby it is held that

termination of a probationer is neither punitive nor stigmatic and termination of applicant's services was just and proper.

4. (C) The applicant's counsel filed rejoinder and denied the fact that the O.A is premature and the appeal was pending. The applicant was required to wait for disposal of the appeal for a period of six months and after that he could have filed this O.A. The applicant's services

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were not terminated on the ground of unsatisfactory service, he had been found unsuitable, therefore he was removed. The respondents have denied that Annex. A.2 ever been issued. They have not filed any proof regarding dispatch register etc and no inquiry in such case has been made out by the respondents. As regards the bad performance of the applicant and rumour mongering, creating rift amongst mazdoors , the applicant has vehemently denied these allegations as the same were without any documentary proof. The applicant has been condemned without affording any opportunity to him, his services were terminated with mala-fide intentions and violation of rules.

5. The applicant was appointed in 26 Ammunition company as Mazdoor on 01.5.2002 on terms and conditions mentioned in the offer of appointment on probation for a period of two years. He was appointed purely on temporary basis and his services could be terminated by giving one month's notice to him. The applicant, as an ex-serviceman, was appointed as mazdoor by respondent no.4. As per applicant's version, though he was appointed as mazdoor but he was asked to perform the duties of clerk. There were some problems between him and respondent no. 4, who exercised unwanted pressure on him to act as his agent in the matter of illegal gratifications and collection of funds wrongfully from each candidates who had applied for the post of mazdoor etc.. It is stated by the applicant that respondent No. 4 was in the habit of indulging in corrupt practices. As the applicant has refused to heed to participate in the misdeeds of respondent no.4, respondent no.4 terminated his services. Respondents' version is that the applicant had been abstaining from duty quite often; he remained absent for 23

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days out of 60 days. As the bitterness between the applicant and the respondent no. 4 increased, respondents' version is that the applicant has started using dilatory tactics being rumour mongering, inciting other mazdoors based on caste politics and disturb the peace and harmony in-side the unit. Accordingly, notice was given on 20.11.2003 that his services shall stand terminated from the date of expiry of period of one month from the date of receipt of the said notice (annex. A.1). Subsequently an order was issued to him on 23.12.2003 vide which the services of the applicant were terminated and the same order was served on applicant's brother Shri Prem Singh (annex. A.5). It is asserted from the applicant's side that the order dated 02.5.2003 was also given to him for terminating his services because of absence of 23 days within a period of 60days. However, the issuance of this letter has been denied by the respondents and their version is that no such order dated 02.5.2003 was ever issued. The respondents have claimed that the applicant was issued notice dated 20.11.2003 as per Rule 5 (1) C.C.S. (T.S.) Rules 1965. After protracted argument in the court, the issuance of such order dated 02.5.2003 was strongly and vehemently denied by the respondents and they have refused to take cognizance of such an order. The applicant had times and again reported to the higher authorities about the illegal activities of respondent No. 4 vide Annex. A.4, A.6, A.8, A.10 & A.11. The applicant contended that because of these complaints, a court of enquiry was conducted against respondent No. 4 and he was transferred.

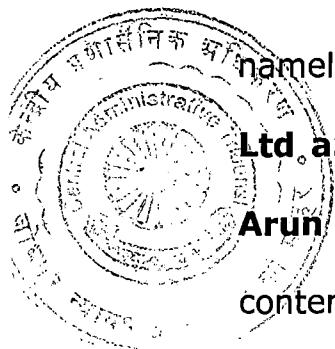
6. The learned counsel for the applicant has contended that he was not given opportunity of being heard before termination of his services.

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The offer of appointment clearly states that his services would be terminated if he was found unsuitable. There is also a mention that his services can be terminated by giving one month's notice on either side during the period of probation of two years. The offer of appointment also speaks of application of CCS (Temporary Services) rules 1965 and applicability of some other rules were also mentioned. The applicant's counsel argued that giving notice was necessary and without giving him notice the orders dated 20.11.2003 and another order 23.12.2003 were issued. On the other hand the learned counsel for the respondents argued that issuance of notice is not required under CCS (Temporary Services) Rules 1965 before termination of services of the applicant as the applicant was appointed on the temporary post of mazdoor; during probation period his services can be terminated without giving him any notice as such. As perusal of Rule 5 (1) CCS (Temporary Services) Rules, 1965 clearly shows that for terminating persons on probation notice need not be given during or at the end of probation including extended period of probation, if any, if a provision has been made specifically in the letter of appointment. [Ref: Government of India MHA, OM No. 4/10/66 Ests (C) dated 26.08.1967.]

7. The respondents have relied on various citation of the Apex Court namely, **Mathew P. Thomas vs. Kerala State Civil Supply Corp. Ltd. and others.** (supra) and **Kendriya Vidyalaya Sangathan vs. Arun Kumar Madhavrao Sindhhaye and Anr.** (supra) and contended that the order of termination is not punitive in nature. The respondents have further contended that protection of Art. 311 (2) is not available to the applicant as he was on probation as per the

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judgement of the Apex Court in the case of **Samsher Singh vs. State of Punjab and another** [AIR 1974(SC)2192]; We have also perused the judgement of Hon'ble High Court of Rajasthan relied on by the learned counsel for the applicant in the case of **Rajendra Kumar vs. Chairman of Rajasthan Roadways.** (supra). In the above case, three charge sheets were issued to the writ petitioner and he was terminated from service without any enquiry and therefore the Hon'ble High Court has held that the order of termination cannot be termed as termination simplicitor and the same is punitive in nature. In the instant case, it is not so. Therefore, the citation made by the applicant does not come to his rescue. The order of termination of the applicant in the instant case is not punitive in nature and the offer of appointment issued to the applicant clearly stipulates that his services can be terminated at any time during the probation or during the extended period of probation, if any. Resultantly this is an admitted view that applicant's services were temporary in nature, thus his services can be terminated at any time without giving him any notice. However, in this case one month notice was given as the applicant was not found suitable for the job. Rules provide no protection to the applicant because of his wrong deeds and dilatory tactics during the short span of two years' probation.

8. In view of the foregoing reasons, no merit does exist in this application. Accordingly the same is hereby dismissed with no order as to costs.

V.K. Kapoor
[V.K. Kapoor]
Administrative Member

jsv

S.M.M. Alam
[Justice S.M.M. Alam]
Judicial Member.

दिनांक 17/12/15 के अनुसार
प्रेसी उपरिक्षित में दिनांक 9/11/6
को भाग-2 का अधिकारण गया।

अधिकारी अधिकारी
कानूनी अधिकारी का अधिकारण
जोधपुर न्यायपीठ, जोधपुर

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