

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

**ORIGINAL APPLICATION No.78/2006
With
MISC. APPLICATION 46/2006**

Date of Order: 27-4-2010

CORAM:

HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER

HON'BLE Mr. V.K. KAPOOR, ADMINISTRATIVE MEMBER

Yogesh Sharma s/o Shri Bhagwati Prasad Sharma, aged about 36 years, r/o near R.T.O. office, Nagar Palika, Colony, Chittorgarh, Ex.-Driver in the office of Dy. Narcotics Commissioner (Administration), Gwalior.

....Applicant

Mr. Manoj Bhandari, Counsel for applicant.

VERSUS

1. The Union of India through its Secretary, Ministry of Finance, Central Board of Excise and Customs, New Delhi.
2. The Narcotics Commissioner of India, Central Board of Excise and Customs, 19, the Mall, Morar, Gwalior-6 (M.P.).
3. Dy. Narcotics Commissioner (Administration), Central Bureau of Narcotics, 19, the Mall, Morar, Gwalior-6 (M.P.).
4. The Dy. Narcotics Commissioner, Central Board of Excise and Customs, Neemach (M.P.).

....Respondents.

Mr. M.Godara, proxy counsel for

Mr. Vinit Mathur, counsel for respondents.

ORDER

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



Sri Yogesh Sharma has filed present OA against his termination order passed by the respondents vide orders dated 09.02.2005 (Ann.A-1), 13.6.2003 (Ann.A-2) & 21.4.1998 (Ann.A-3). The applicant has sought the reliefs that are as follows:-

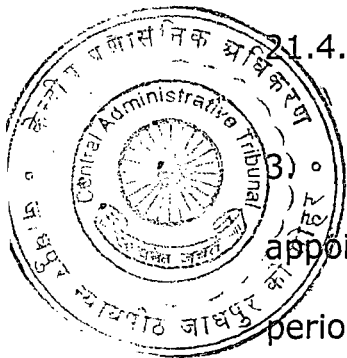
- "(i) by an appropriate order or direction, the impugned orders dated 09.2.2005 (Ann.A/1) passed by under Secretary to the Government of India received by the applicant on 03.10.2005 and order dated 13.06.2003 (Ann.A/2) passed by the Narcotics Commissioner (Headquarter) and the order dated 21.4.1998 (Ann.A/3) passed by the Narcotics Commissioner (Administration), Central Bureau of Narcotics, Gwalior may kindly be declared illegal and be quashed.

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- (ii) by an appropriate order or direction, the respondents be directed to reinstate the applicant on the post of Driver with all consequential benefits.
- (iii) any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

2. The brief facts of the case are that the applicant was appointed as driver on 05.7.1995 on probation for a period of two years in the pay scale of Rs.950-1150-1400 (Ann.A-4). His services were terminated on 12.9.1996 as per rule 5 (1) Central Civil Services (Temporary Service) Rules, 1965. He was reinstated back in service by order of respondent 2 vide order dated 4/5.9.1997 (Ann.A-5). A charge sheet was issued to him on 06.02.1998 under rule 14 of the CCS (CCA) rules, 1965 (Ann.A-6) in which Dy. Narcotics Commissioner, Central Board of Excise and Customs, Neemch (respdt 4) was appointed as Enquiry Officer (Ann.A-7). On 21 April, 1998 his services were terminated under rule 5 (1) of CCS (temporary service) rules, 1965 by Dy Narcotics Commissioner (Admin.), Central Bureau of Narcotics, Gwalior (respdt 3). It is averred by the applicant that his services were terminated without enquiry into the charges, he was not giving opportunity to defend his case. The applicant has prayed to quash the orders dt 03.10.2005, 13.6.2003 and 21.4.1998 (Ann.A-1 to A-3) and declared these orders as illegal.

3. The respondents in reply have stated that the applicant was appointed as a driver in respondent department on 05.7.1995 for a period 02 years on probation. During this probation period, on 15 Jan, 1998, the applicant while working as driver in the office, around 5:30 pm came out from the quarter alongwith another person in a drunken stage, started using unparliamentarily language on two lady labourers namely Smt. Shanti Bai w/o Shri Koushal and Smt. Susheela, w/o Shri Ram Swaroop, who were engaged in the construction of government



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residential quarters, for this gross misconduct, charge sheet was issued to the applicant. The respondents have mainly dwelt upon the fact that as applicant did not reply to charge sheet etc. the competent authority on 21.4.1998 terminated his services (Ann.A-3). The applicant moved in appeal and gave representation which were rejected vide orders dt 13.6.2003 (Ann.A-2) & 09.02.2005 (Ann.A-1). It is averred by respdts that the applicant has produced himself before this Tribunal as a substantive employee of the answering respondents, whereas he was working in temporary capacity being a probationer. His services were never confirmed by the respondents, thus termination of his services under Rule 5 (1) CCS (CCA) rules, 1965 is just and proper. It is further averred that the applicant did not submit his explanation/reply to the charge sheet for more than 03 months earlier. The respdts have requested that the orders of applicant's termination and subsequent orders of the higher authorities be maintained. Thus no relief need be given to applicant in view of the gravity of situation. The respdts have filed an additional affidavit in support of their contentions.



3(6) The applicant in rejoinder has stated that his termination was made under rule 5 (1) CCS (CCA), rules, 1965 without waiting for his reply to the charge sheet etc. This termination cannot be sustained in the eyes of law as the same is in violation of principle of natural justice.

During that period, the applicant was suffering from serious illness and loss of mental balance. No material facts are concealed by him, who was terminated without following the process of law and conduct of enquiry. The applicant is involved in the false complaints, he cannot be terminated under rule 5 (1) CCS (CCA) rules, 1965; his services cannot be termed as temporary, these rules are not applicable on probation as

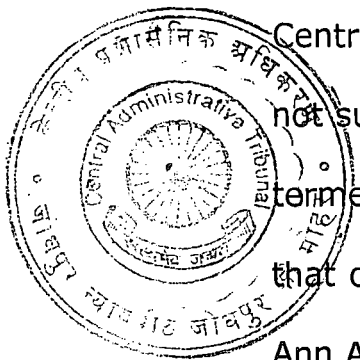
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he was on substantive appointment. The termination of applicant's service is absolutely illegal and without jurisdiction.

4(a). Learned counsel for the applicant in arguments has narrated the story at length, he was appointed in the respondent department as driver on 05.7.1995 on probation for 02 years as a regular employee. During 1998 in drunken stage, he tried to molest two women labourers and attacked the person who came to rescue them. The applicant has furnished medical report in which it is stated that he was suffering from anxiety and depression (Ann.A-8), he was on substantive appointment though the word temporary was inserted in the legal language 'during probation period for 02 years'. He was issued a charge sheet but all of sudden, his services were terminated vide order of respondent 3. The basic principle of natural justice is violated. In support of his contention, the applicant has relied upon the dictum of the apex court in 1998 (2) SCC 346 U.P. Cooperative Federation Ltd. Vs. Ram Singh Yadav & Ors.; (1984) 2 SCC 369 Anoop Jaiswal vs. Government of India & Anr.; AIR 1981 SC 41 Baleshwar Dass & Ors. vs. State of U.P. & Ors; and 1999 (3) SCC 60 Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences , Calcutta & ors. The notice of termination is not sustainable as no enquiry was conducted; the word termination was termed as vague. Accordingly, the counsel for applicant has requested that opportunity be given to him and orders as regards his termination Ann.A-1 to A-3, be quashed and declared illegal.

4(b). Learned counsel for the respondents in arguments has clarified that the applicant was appointed on probation for a period of 02 years on temporary basis. In view of applicant's bad acts of commission and grave misconduct, he was removed from service. The applicant was

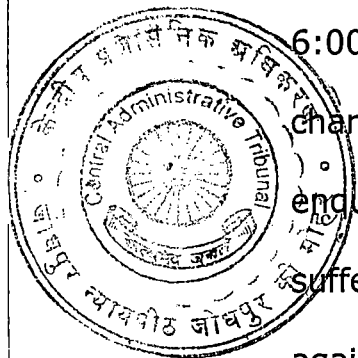
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temporary in service, he was said to be suffering from anxiety and depression. The factual situation is that he did not take his duty seriously, he was mostly consuming liquor and tried to molest female labourers as his probation was not completed. His appointment on temporary services was set at naught, thus his services were rightly terminated under rule 5 (1) CCS (CCA) rules, 1965.

5. The applicant was appointed on the post of driver on 05.7.1995 in the pay scale of Rs.950-1150-1400 (Ann.A-4). His appointment was on probation for a period of two years, his services were terminated on 12 Sept, 1996 as per rule 5 (1) of CCS (Temporary Service) rules, 1965. But he was reinstated in service by order of respdt 2 dt 4/5.9.1997 (Ann.A-5); he joined his duties in pursuance of this order on 11.9.1997. Then on 06.02.1998, he was issued a charge sheet that relates to two charges, namely using unparliamentarily language and attempt to molest two female labourers viz. Smt. Shanti Bai w/o Kausal & Smt. Susheela w/o Sri Ram Swaroop. Furthermore, there was a charge of hitting/beating Ram Swaroop who came forward to protect these two female workers. There is charge of consuming alcohol on 04.02.1998 at 6:00 pm in office premises, thus Ann.A-1 to A-3 relate to imputation of charges. In the process, an enquiry officer was deputed to conduct enquiry into the said charges. The medical report shows that he was suffering from anxiety, sleeplessness etc. With the charge pending against him, respondent 3 gave a notice of termination of applicant's service under rule 5 (1) of CCS (temporary service) rules, 1965 dt 21.4.1998. The appeal against this termination order was rejected by respondent 2 vide order dt 13.6.2003. Lastly, his representation dt

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25.11.2003 before Member (P & V) Central Board of Excise & Customs was not entertained by order dt 09.02.2005.

6. The applicant was given a temporary appointment vide order dt 05.7.1995 for a period of two years on probation. His contention is that as the chargesheet was given to him, he was to be given an opportunity for presenting/defending his case. As per records, it is specified that he did not give reply to the charge sheet for a period of 03 months. Looking to the seriousness of charges that pertain to heavy drinking during office hours and attempting to molest the lady labourers; this made the respondents to terminate his services without further delay so as to avoid any further embarrassment. Applicant's version is that his services were terminated abruptly by summary procedure under these rules of 1965, but it is observed that the applicant was on probation & his services were temporary. In such a short period, he acted in an irresponsible manner which was unbecoming of a govt employee. He was engaged in a delinquent behaviour and indulged in conducting illegal search of vehicles at Neemach under the influence of liquor; mostly being drunk and showing irresponsible behaviour by way of attempting to molest two women labourers. Because of these frivolous charges, his appeal & representations etc. were rejected.

The applicant's services were again terminated on 21.4.1998; his appeal against this order was rejected on 13.6.2003. He moved the present OA before CAT Jodhpur on 10.4.2006. In between, he made a representation to the Government in Finance, Central Board of Excise and Customs, New Delhi; his representation was rejected by Govt vide order dt 09.2.2005. From this date, the application presented by him is late by 02 months after excluding the time provided for presentation of

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application. Looking to the social and psychic condition of the applicant, the OA presented before this Tribunal is not too late. In the interest of deliverance of justice to the applicant and looking to his bad predicament, this could be rightful and justified to give an opportunity of hearing to him. Therefore, the marginal delay in the presentation/ submission of the present OA is hereby condoned. The present case would be heard and decided on merit.

8. The applicant was working as a temporary employee being a probationer for a period of 02 years, which could be extended further. His services were not confirmed during the period in question. His order of posting is that of a substantive nature, but as he was on probation, his services could be terminated under rule 5 (1) of CCS rules, 1965. In such a situation, there is no need of mentioning the reasons of the termination order; the instructions of Government of India clearly justify the action taken by respondents in applicant's case. This is upto the appointing/disciplinary authority to take action in the light of prevailing situation. Looking to his persistent default, bad and rowdy behaviour, the respdts took recourse to terminating applicant's services, while he was temporary and still working on probation. Thus there was no need to take reply to the charge sheet issued earlier and conducting a departmental enquiry separately, clearly enough, there was no violation of natural justice. His work and & official behaviour further deteriorated after termination and reinstatement first time during 1996; thus no mercy need be shown to him.

9. In applicant's case, commission of an offence/display of grave misconduct was made second time during probation period. In 1996, he consumed alcohol during office hours; later during 1998 early, he tried to molest two female workers/labourers besides illegally checking

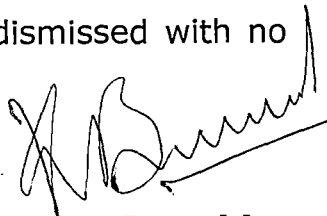


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vehicles under the sway of liquor. The charges are grave & at short interval, thus the applicant can't get relief from the dictum of Anoop Jaiswal vs Government of India & Anr. (1984) 2 SCC 369. In the case of U.P. Cooperative Federation Ltd vs Ram Singh Yadav & Ors (1998) 2 SCC 346, the matter of departmental enquiry is raised; in this case, the applicant was absent from duty for a long time; so the charges were to be enquired into. But in the present context, applicant has committed grave offences repeatedly, and his services being of temporary nature, were terminated in view of grave misconduct. As regards service-Member of service to means a govt servant appointed in a substantive capacity, there is no denial in applicant's case. But he was on probation, his services were still temporary, thus action taken in terminating him from service for his grave misconduct, would not tantamount to violation of CCS (CCA) rules, 1965. Thus the citation put forth by the applicant, namely Baleshwar Dass & Ors. vs. State of U.P. & Ors AIR 1981 SC 41 would not be helpful to him in the present context. Similar is the case of Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & ors 1999 (3) SCC 60 would not be directly applicable in the present case as the nature and contents of this case are somewhat different. The citations submitted by applicant do not come to the rescue of the applicant who behaved in a very irresponsible manner and no signs of improvement, that was totally unbecoming of a government employee.

10. In the light of observations made above, no case is made out in applicant's favour. Thus, the present OA is hereby dismissed with no order as to costs.


(V.K. Kapoor)
Administrative Member


(Dr. K.B. Suresh)
Judicial Member



दिनांक 17-12-15 के आदेशानुसार
मेरी उपस्थिति में दिनांक 10-2-16
को भाग-II व III पढ़ा दिए गए।

अनुशासक अधिकारी
केन्द्रीय प्रशासनिक प्रशिक्षण
जोधपुर न्यायपीठ, जोधपुर

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