IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 48/90 ~~198X~~
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DATE OF DECISION 30-10-1990

Smt.K.Leela — Applicant (s)

M/s K Karthikeya Panicker &
Daya K Panicker — Advocate for the Applicant (s)

Versus

Union of India & 3 others — Respondent (s)

Mr V Krishnakumar, ACGSC — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr.SP Mukerji, Vice Chairman

&

The Hon'ble Mr.AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The question involved in this application is whether the services of a probationer can be validly terminated on the ground that she had furnished incorrect details in a verification certificate before appointment on probation, without giving her an opportunity to dispute or explain the allegation. The facts in brief are as follows.

2. The applicant is a widow of late K Baby, Jam. Durwan Service No.SOE 30-1946 Unit/Shift Cordite Factory, Aruvankadu who died in harness on 31.12.1981. As her request for compassionate appointment was not considered favourably, she filed

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an application under Section 19 of the Administrative Tribunals Act as OAK-37/87. The application was disposed of directing the respondents to give her appointment in Kerala State. Accordingly, she was posted as MES/109932 Ty Mazdoor C/o BS Section GE(P) Trivandrum in the office of the fourth respondent and she joined duty on 4.1.1988. The appointment order Annexure-R1 made it clear that she would be on probation for two years initially which is liable to be extended, and that failure to complete the probationery period to the satisfaction of the competent authority would render her liable to be discharged. She was also directed to furnish a declaration and it was specifically mentioned in Annexure-R1 that if it was proved that any information furnished by her in the declaration is false or that she had wilfully suppressed any material information, she would be liable for removal from service and for such other action as deemed fit. While she was working as a probationer in the office of the fourth respondent, the impugned order dated 31.10.1989(Exbt.P1) purportedly issued under the provisions of CCS(Conduct) Rules 1964 and paras 17-1 and 17-2 of the Vigilance Manual was served on her. It was mentioned in this order that in December, 1988 when she had filed the attestation form for verification of her character and antecedents, a criminal case in Crime No.22/87 under Section 324, 326 and 34 IPC registered by the Poojapura Police in which she was the fourth accused and a counter case in Crime No.23/87 where she was the fourth prosecution witness were pending and that as she had suppressed this

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fact in the attestation form without mentioning the same in Col.12A(J) of the said form, her services were no longer required. Even though the applicant sent a Lawyer notice to the respondents 2,3 and 4 requesting them not to give effect to the order she did not receive any reply. Hence she has filed this application under Section 19 of the Administrative Tribunals Act challenging the impugned order of termination on the ground that to terminate her services without giving her an opportunity to establish her innocence against the imputation made against her amounts to violation of the principles of natural justice and the provisions of Article 311(2) of the Constitution of India. She has stated in the application that she was acquitted in the criminal case mentioned in the Exbt.P1 order and she has also produced a copy of the judgement of the Additional Chief Judicial Magistrate, Trivandrum(Exbt.P7).

3. The respondents in the reply statement has justified the termination of services of the applicant without giving her a notice on the ground that the applicant being a probationer, she has no right to any post and therefore she was not entitled to any notice before her services were terminated. It has also been contended that under paragraph 17-1 and 17-2 of the Vigilance Manual, a Probationer who does not hold a substative post can be removed from service without any inquiry.

4. We have heard the arguments of the learned counsel on either side and have also carefully gone through the documents produced. That the applicant was only a probationer when her

services were terminated by Exbt.P1 order is a fact beyond dispute. It is well settled by now that the services of a probationer can be discharged without taking recourse to the procedure laid down for removal of a Government servant during the period of probation, if the work and conduct of the probationer is not found satisfactory. But it is also settled law that if the services are sought to be terminated for a specific reason, misconduct or otherwise which according to the employer may render the probationer unsuitable for employment it is necessary in the interest of justice to give the probationer an opportunity to show cause against the proposed action. In this case the services of the applicant were terminated by Exbt.P1 order for the reason and with the stigma that she had suppressed the fact that she was involved in a criminal case in the verification attestation form furnished by her. That the applicant has wilfully suppressed such information is not a fact admitted. So before terminating the services of the applicant for the alleged suppression by her of the details regarding the pendency of the criminal case, principles of natural justice and equity require giving her an opportunity to show cause against the proposed action, so that she could dispute the imputation against her and if possible establish that she was not guilty of the imputation. The termination of the applicant's services on the ground that she suppressed certain details without giving her an opportunity to explain as to whether she had actually suppressed or not appears to us to be highly arbitrary, unjust and violative of the principles

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of natural justice. Therefore, we are of the view that the impugned order at Ext.P1 dated 31.10.1989 issued by the fourth respondent is liable to be quashed. The applicant is therefore, entitled to be reinstated in service forthwith. But in the circumstances of the case, we are of the view that there need not be any direction to pay back wages.

5. In the result, we allow the application in part, quash Ext.P1 order dated 31.10.1989 and direct the respondents to reinstate the applicant in service within a month from the date of communication of this order. The applicant will not be entitled to any back wages. However, the respondents will be at liberty to take appropriate action in accordance with law and if so advised, on the alleged suppression by the applicant in the attestation form of the pendency of criminal proceedings against her. There is no order as to costs.

30.10.90

(A.V.HARIDASAN)
JUDICIAL MEMBER

30.X.90.

(S.P.MUKERJI)
VICE CHAIRMAN

30.10.1990

trs