CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 10-4-90

Present

Hon'ble Shri NV Krishnan, Administrative Member

and

Hon'ble Shri N Dharmadan, Judicial Member

OA NO.92/89

TC Vinod :Applicant

Vs.

1 The Director, Central Institute of Fisheries Technology, Willington Island, Matsyapuri PO, Cochin-29

2 The Senior Administrative Officer Central Institute of Fisheries Technology, Willington Island, Matsyapuri PO, Cochin 682 029.

3 Union of India rep. by the Secretary, Ministry of Agriculture, New Delhi : Respondents

M/s MK Damodaran, CT Ravikumar and KS Saira : Counsel of Applicant

Mr PVM Nambiar, SCGSC : Counsel of Respondents

O R D E R

Shri NV Krishnan, Administrative Member.

The applicant was appointed as a Junior Clerk on compassionate grounds in the Central Institute of Fisheries Technology on the terms and subject to the conditions mentioned in the Memorandum dated 25.5.88 (Annexure II) issued by Respondent-2. Clause-5 of the Memorandum states that he would be on probation for two years from the date of his joining the post, which may be extended at the discretion of the competent authority.

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It is also further stated that failure to complete the period of trial to be satisfied (sic the satisfaction ?) of the competent authority will render him liable to be discharged from service. Clause-6 of the Memorandum, being important, is reproduced verbatim.

> "His appointment may be terminated without assigning any reason by one month's notice on either side under Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965, as applicable, mutatis-mutandis the employees of the council. During the period or probation however, the appointing authority may terminate his service without notice and without payment of salary in lieu thereof".

2 The applicant joined service as a probationer on 22.6.88. His grievance is that while functioning as such, his services were terminated by Respondent-1, Director, Central Institute of Fisheries Technology by his order dated 31.12.88 (Annexure-III) which is reproduced below:

> " In pursuance of clause 6 of this office memorandum No.4-10/86-Adm Vol.I dated 25.5.88, offering Shri TC Vinod, the post of Junior Clerk, his services as Junior Clerk at the Central Institute of Fisheries Technology, Cochin are terminated with effect from the afternoon of 31.12.1988".

3 The applicant assails this order of termination on the following grounds:

- which is passed against him qua probationer -

(i) The impugned Annexure-III order does not assign any reason for the termination of his services, but this is not authorised by Clause-6 of the Memorandum dated 21.5.88 (Annexure-I);

(ii) The condition stipulated in the second sentence of Clause -6 of Annexure-II ~~xxxxx~~ that during the period of probation the appointing authority may terminate his services without notice and without payment of salary in lieu there of, is an unconscionable provision

and is to be declared as void, in the light of the decision of the Supreme Court in Central Inland Water Corporation Ltd and another Vs. Brojonath Gangauly and another (1986 3-SC Cases-156).

(iii) Even if Clause -6 gives valid authority to Respondent-1 to terminate the services of a probationer in the manner mentioned therein, the power has been exercised arbitrarily, as a person junior to the applicant has been retained, while the applicant's services have been terminated.

(iv) The applicant was appointed on probation for a period of two years. His services were terminated prematurely and that too, without giving him an opportunity to be heard.

4 The applicant, therefore, has prayed that the impugned Annexure-III order may be quashed and the respondents be directed to reinstate him in service with all consequential benefits.

5 The respondents have resisted this application. It is stated that the applicant was entrusted with the work of dairising and distribution of DAK/letters, parcels etc. to the different sections of the office. In this capacity he had to sort out letters/Dak and enter them in the concerned registers and distribute them to the sections concerned. This is the simplest of all items of work in the office. Even then the applicant was not doing his work properly and promptly in spite of guidance given to him by his superiors and co-workers. He could not be utilized as Typist as he did not know typewriting. He was tried for six months and as he did not show any improvement, his services were dispensed with with effect from 31.12.88 by the

impugned order.

6 It is contended that this is not a punishment and that the services of the probationer can be terminated in this manner in accordance with the conditions of service. It is also contended that the right of the appointing authority to terminate the services of a probationer in this manner has been upheld by the Supreme Court in a number of decisions.

7 Respondents have also produced Annexures R1A, R1B, R1C and R1D which indicates the particulars of work done by him on 15.12.88, 16.12.88 and 17.12.88. On these dates, the papers entered by him in the concerned diaries were 37, 49 and 46 respectively leaving at the end of the day 79, 48 and 44 papers respectively pending. Though the work entrusted was a merely mechanical one, yet, he was slow and left behind arrears. This was the state of affairs despite being given instructions and guidance earlier. Hence, the appointing authority invoked the powers under Clause-6 of the appointment order in relation to a probationer and terminated his service.

8 When the case came up for hearing Shri Saseedharan, Proxy Counsel appeared for the applicant and sought an adjournment. We did not oblige xxxxxxxxxxxxxx as the case had already been adjourned on two earlier occasions at the instance of the applicant. We heard the counsel of respondents and as the Proxy Counsel for the applicant has nothing to submit, the case was closed for orders.

and we did not find any merit in the reasons given.

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9 There is no dispute that the Annexure-III order has been issued in pursuance of the 2nd sentence of Clause-6 relating to termination of the service of a probationer during the period of probation. The applicant's contention is that this sentence ~~xxxxxx~~ authorises the authority to terminate his services only without ~~either~~ notice and without payment of salary in lieu thereof. It does not authorise the appointing authority to terminate the services without assigning any reasons. Hence reasons are bound to be given.

10 We are not impressed by this argument. Clause-6 has to be read as a whole. This clause contemplates termination of services without assigning any reason under two circumstances. The first is by giving one month notice on either side under the Central Civil Service (Temporary Service) Rules, 1965. However, during the period of probation the services may be terminated without notice or without any payment of salary in lieu thereof. The employee has entered service as a probationer. If the probation is satisfactorily completed the official ~~xxxxxxxxxxx~~ could either be confirmed or if there is no permanent vacancy, he may be continued as a temporary government servant. Clause-6 merely explains the manner in which his services can be terminated either during the probation or during his temporary service. ~~The first sentence of~~ clause 6 really clarifies that no reasons need be assigned for such termination in either case. However, in the case of probation it is further provided that neither any advance notice need be given nor any salary in lieu of such

(which is the other circumstance)

notice needs to be given. When he becomes a temporary government servant, he will be entitled to one month's notice on either side. Therefore, the contention that Clause 6 does not authorise termination of a probationer's service during his probation without assigning any reason is not valid.

11 The applicant next contended that this provision of clause 6 is unconscionable and is violative of the Contract Act. He seeks support for this contention from the decision of the Supreme Court in Central Inland Water Transport Corporation case (1986-3 SC Cases 156). That was a case where the respondents were permanently absorbed in the service of the Appellant Company on senior positions. The term in the contract of employment, as also in Rule 9(1) of the Service Rules of the Company, provided for termination of services of permanent employees, without assigning any reasons, on 3 month's notice or pay in lieu thereof, on either side. It was this condition which was struck down by the Supreme Court as being unconscionable, arbitrary and opposed to public policy and hence, void under Section 23 of the Contract Act.

12 It is, indeed, surprising that the applicant has sought to make a comparison between the conditions of service obtaining in the present case and in the above case decided by the Supreme Court which are totally dissimilar. We are, here concerned with a new entrant on the threshold of his service career. He is a mere probationer with no right to hold any post and whose performance was being watched to consider whether he could be confirmed or continued as a temporary employee.

The Supreme Court was considering the case of a person who had rendered long service and became a senior permanent official, ~~while~~ None can deny that a provision which authorises the termination of the services of a permanent employee by a mere three months' notice without assigning any reasons - and that too without indicating who is competent to do so - is not only harsh, but goes against all basic principles of service jurisprudence. Hence this condition contained in Rule 9(1) was quashed by the Supreme Court describing that rule aptly as the " Henry VIII Clause", thus ~~invoking~~ recalling the name of the king regarded popularly as the impersonation of executive autocracy. Nor can any one complain that, when an employee is on probation he does not get a claim to any security of tenure or he is not entitled to any reason to be stated to him before his service is terminated. There is nothing unjust about this provision in relation to a probationer.

13 The Hon'ble Supreme Court has considered a number of cases of probationers whose services were terminated summarily without assigning any reason on a number of occasions. Yet, they have not expressed, even once, any shock at such a condition in the order of appointment. In the circumstances, we are of the view that the principles laid down in the Central Inland Water Transport Corporation case does not lend any support to the applicant's case. Suffice it to say, that the nature and tenure of the probationer's appointment being what it is and considering that the period of probation is a period of trial, it is not all surprising, shocking or revolting that such a condition of service has been stipulated. It is by no means violative of the Contract Act.

14 The respondents have amply proved that there were good and sufficient reasons for invoking the powers under clause-6 to terminate the applicant's services. A new junior clerk should have been able to learn the art of diarising-if it can be given such a dignified description-in a couple of days. The fact that the applicant was lagging behind in doing even such a simple work is evident from Ext.R1A, R1B, R1C and R1D. Therefore, it is idle to contend that Respondent-1 had used his power arbitrarily. He had good and sufficient reasons for taking recourse to this step.

15 In connection with the non-supply of any reason for the termination of the applicant's service, reference has been made to the judgment of the Supreme Court in Manager Government Press and another Vs.BD Belliappa (AIR 1979-SC-429). In that case, the order to terminate the services of the respondent, a temporary employee, without assigning any reasons whatsoever, was held to be arbitrary.

16 We have seen this judgment. That was a case where the services were terminated under Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 without assigning any reason as can be seen from the following extracts of the judgment.

> "21. In the instant case no special circumstances or reason has been disclosed which would justify discriminatory treatment to Belliappa as a class apart from his juniors who have been retained in service. Mr Veerappa's frantic efforts to spell out justification for differential treatment to the respondent by reference to the show-cause notice that preceded the impugned action, is entirely futile when the stand adhered to throughout

> by his client is that there is no nexus between the show-cause notice and the impugned action which was taken without any reason, in exercise of the power vested in the competent authority under the conditioms of the respondent's employment.
>
> "22. In view of this, we have no alternative, but to hold, that the termination of Belliappa's service was made arbitrarily and not on the ground of unsuitability or other reason, which would warrant discriminatory treatment to him as a class apart from others in the same cadre".

The provision of Rule 5 cannot be construed to mean that without any reason, whatsoever, the services of a temporary employee may be terminated. There must be some reason for termination, such as the applicant is the junior most in service and is surplus to the requirements or his services are not satisfactory. The rule only enables the appointing authority to terminate the services without assigning any reason, but the existence of a proper reason is a sine qua non in such cases. While the reasons are not stated in the order, they are shown to the High Court or the Tribunal to satisfy themselves that the termination is not arbitrary. In Belliappa's case the respondents took the stand in the court, as can be seen from the extract reproduced above, that the enquiry held earlier had nothing to do with the termination. They did not show any other reason either. Hence, it was held that the impugned action was arbitrary, having been passed without reasons. That case is unique in nature and cannot be relied upon in cases like the present one, where reasons for termination exists and we are satisfied about the same.

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17 The rule that now holds the field is the following observations of Hon'ble NL Untwalia (J) of the Supreme Court in State of Maharashtra Vs. VR Saboji (AIR 1980 SC-42).

> "Ordinarily and generally the rule laid down in most of the cases by this Court is that you have to look to the order of the face of it and find whether it casts any stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the Government servant who challenges such an order. The Government is on the horns of the dilemma in such a situation. If the reasons are disclosed, then it is said that the order of the Government was passed by way of punishment. If it does not disclose the reasons, then the argument is that it is arbitrary and violative of Article 16. What the Government is to do in such a situation ? In my opinion, therefore, the correct and normal principle which can be called out from the earlier decisions of this Court is the one which I have indicated above".

This has been endorsed by a larger Bench of that Court in Oil & Natural Gas Commission Vs. Mod S Iskander Ali (AIR 1980 SC 1242). Based on that criterion, neither malafide nor arbitrariness is discernible in the termination order (Ext.A III).

18 It will be relevant to rely on the judgment of the Supreme Court in Ajit Singh Vs. State of Punjab (1983) 2 SC 217 for a passage in that judgment (reproduced below) which brings out clearly the objective of keeping an employee on probation. These observations make it clear that the applicant's arguments have no force.

> "7. When the master-servant relation was governed by the archaic law of hire and fire, the concept of probation in service jurisprudence was practically absent. With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject-matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed by way of punishment from service unless he is given an

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> an opportunity to meet the allegations if any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master-servant relationship put the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. Period of probation gave a sort of locus pententiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation. Viewed from this aspect, the courts held that termination of service of a probationer during or at the end of a period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to (see Parshotam Lal Dhingra V. Union of India). The period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service. Period of probation may vary from post to post or master to master. And it is not obligatory on the master to prescribe a period of probation. It is always open to the employer to employ a person without putting him on probation. Power to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer".

19 Finally, the observations of the Supreme Court in State of Gujarat Vs. Sarachandra Manohar Nave (AIR 1988 SC 338) are very relevant in the context of the present case. Para 3 of the judgment (reproduced below) clearly shows that the services of a probationer can be terminated without assigning any reason or issuing notice.

> "We are clear in our mind that, but for the rules which equate termination of service during or at the end of probation with removal, no proceeding would have been necessary to terminate the services of a probationer. That has been pronounced view of this court".

20 It is also alleged that as the applicant's juniors have been retained, the termination of only his service will be discriminatory. This criticism is laid to rest by the judgment in Champaklal's case (AIR 1964 SC 1854). It was pointed out therein that seniority in service becomes relevant only in cases of retrenchment, where the juniormost person has to be retrenched. Terminating the service of a senior temporary employee due to his bad and unsatisfactory work and retaining juniors against whom there were no complaints is neither discriminatory nor arbitrary. For, in that event, the former is placed in a class by itself, separate from his juniors who will belong to another class.

21 It is contended by the applicant that the impugned order is a punishment. The impugned order of termination does not cast any stigma on the applicant and hence, there is no question its being a punishment. It is a simple order of termination in accordance with the terms of appointment, no doubt, motivated by the unsatisfactory work of the applicant. That will not be an order of punishment.

22 There is an allegation that Annexure R1(a) to R1(d), the statement which show the work done and the work left in arrears by the applicant, has been obtained from the applicant malafide. As stated earlier, a person on probation is on trial regarding the quality of his work and suitability in service. To judge the quantum of the work done by the applicant, the respondents were entitled to get a statement of work done by the applicant. There is no question of malafide in this. Respondents have

to show us satisfactory reasons for terminating the applicant's service. If, with a view to establishing the totally unsatisfactory nature of work, they ask the applicant to furnish a statement of work done by him from day to day, that cannot be branded as malafide actions. It is not the applicant's case that the statements made in R1(a) to R1(d) do not represent the correct state of affairs of his work.

23 It is lastly contended that the applicant was appointed on probation for 2 years. However, his services were dispensed with within 6 months of appointment. He had not been given even a proper opportunity to improve his performance to satisfy his superiors. We consider this argument to be without any substance. Admittedly, the applicant had been given the lightest of all assignments. It is purely a mechanical job of entering all the letters etc. received in the office from outside in the relevant registers and distribute them to the concerned Assistants/Dealing hands dealing with the subject. If, at the end of 6 months, it is shown that the applicant was not able to cope up with the work and that he was in heavy arrears of work every day, the respondents cannot be faulted in coming to the conclusion that the applicant was incorrigible and his services therefore, had to be terminated. The respondents have neither to wait for full 2 years before taking such action nor can they be expected to carry on a burden like the applicant.

24 After the case was closed for orders on 22.2.90, a M.P. was presented on the same day by the applicant's counsel seeking re-hearing of the application. It is stated therein that as the counsel was engaged before the High Court of Kerala he could not appear before us when we took up the case for final hearing. The other ground mentioned is that the applicant wanted to file an additional rejoinder to rebut the allegations raised in the additional reply statement dated 12.2.90 filed by the respondents. We have considered this petition in Chambers. The applicant's case has been well presented in the Original Application itself and it is not as if any lacunae had to be filled up. Further, we had already accommodated the applicant by granting adjournment on two occasions. Hence,we felt that there was no point in showing further indulgence by adjourning the case again. The additional reply filed by the respondents does not, in fact, contain any material, not already referred to in the first reply affidavit. That apart,the case was adjourned on 13.2.90 precisely to enable the applicant to file a rejoinder, if he wanted to but was not filed. In these circumstances, we felt that no case was made out for a re-hearing and hence we reject the M.P.

25 We have considered all the issues raised and for the reasons mentioned above, we find no substance in this application and it is accordingly dismissed.

26 There will be no order as to costs.

(N Dharmadan) 10.4.90
Judicial Member

(NV Krishnan) 10/4/90
Administrative Member

10-4-90

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 92/ ~~1989~~

DATE OF DECISION 22.10.1990

T.C VINOD — Applicant (s)

M/s. M.K Damodaran, C.T Ravikumar & K.S Saira — Advocate for the Applicant (s)

Versus

The Director, Central Institute of Fisheries Technology, Cochin-29 and 2 others — Respondent (s)

Mr PVM Nambiar — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

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

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

Right of a probationery Junior Clerk, appointed on compassionate grounds in the Central Institute of Fisheries Technology, to continue in service when he is found to be unfit, according to the employer, is the question that arises for consideration in this case.

2. A probationer has no legal right to challenge his termination. The Supreme Court in Purushotham Lal Dhingra's case (AIR 1958 SC 36) held "the termination of his employment does not deprive him of any right and cannot, therefore, by itself be a punishment" (emphasis supplied). "But for the rules which equate termination of service during or at the end of probation with removal, no proceeding would have been necessary to terminate the service of

a probationer"(See-State of Gujarat v. Sharadchandra Manohar Neve,AIR 1988 SC 338). His service is to be treated as a "period of testing". It is tantamount to "suspension of a final appointment" of an officer until he proves himself to be fit for the job. He does not have a substantive status though he might be potential enough to acquire such a status on satisfactory completion of the probation. The dictum,in Ajit Singh and others v. State of Punjab and others, 1983(1) SLJ 370(SC),is apposite in this connection."In order that an incompetent and inefficient servant is not foisted upon him(the employer) because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. Period of probation gave a sort of 'locus pententiae' to the employer to observe the work, ability, efficiency, sincerity and competence of the servant, if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation".(emphasis supplied).

3. In the absence of rules governing the probationer, as observed by Jaswant Singh.J. in State of U.P v. Ram Chandra, AIR 1976 SC 2547, " the constitutional position has

now been made crystal clear by a bench of seven Judges of this Court (SC) in Shamsher Singh v. State of Punjab (AIR 1974 SC 2192)". "Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post". But "... .... on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged", the authority can simply discharge him without any notice or enquiry.

4. So when the employer comes to a bonafide conclusion that a probationery employee is not a fit person to hold the post to which he is appointed during the period of probation and proceeds against him in the direct way without casting any aspersions on his honesty or competence, as held by the Supreme Court in State of Bihar v. Gopi Kishore Prasad, AIR 1960 SC 689, "his discharge would not, in law, have the effect of a removal from service by way of punishment as he would, therefore, have no grievance to ventilate in any court".

5. But the Court or Tribunal may go into the legality of such discharge in appropriate cases . Even though a probationer may have no right to continue in service under the circumstances indicated above, yet the order terminating his service can be examined by the Court or the Tribunal after lifting the veil and see whether the employer has, after a proper internal enquiry, came to a fair and reasonable conclusion as to whether the employee is really unfit enough to be discharged without continuing or regularising him in service. The circumstances and facts must indicate that a bonafide decision had been taken after a fair assessment of

the work of the probationer. The Supreme Court held in Bishan Lal Gupta v. State of Haryana and others (AIR 1978 SC 363) that the intention behind an internal enquiry against a probationer, which is only a summary enquiry, is to determine the suitability of the candidate to continue the service of the probationer in the post in which he has been posted. After laying down the principles the Court further held "It is impossible to lay down propositions which are so clear cut as to cover every conceivable case. Indeed an attempt to do so may make the law too rigid. It is only if patent facts disclose a serious enough infringement of law as well as indubitably damaging and undeserved consequences upon a petitioner that the Court's conscience could be so moved as to induce it to interfere under Article 136 of the Constitution".

6. Now we can examine the facts of this case by lifting the veil to ascertain the real state of affairs as to whether the decision taken by the employer in this case for terminating the services of the applicant causes any injustice or this is one of such rare cases in which the conscience of this Tribunal could be moved for interference.

7. This application was finally heard earlier and it was dismissed by our judgment dated 10.4.1990. But considering R.A 64/90 we vacated our judgment and the case was again heard on 21.9.1990. The applicant was appointed on probation on 22.6.88 subject to the terms

and conditions in Annexure II offer of appointment. Under clause 5 the period of probation is two years. But he can be discharged at any time in exercise of the powers under clause 6. By Annexure III dated 31.12.88 his service was discharged without any notice or assigning any reason.

8. The learned counsel, Shri M.K Damodaran, raised the following grounds for reconsideration.(i) The impugned order at Annexure III is unsustainable because it does not give any reason nor is it in terms of the condition in clause 6 of Annexure II, which itself is unconscionable. (ii) Details in R.1A, R.1B, R.1C and R.1D, which are only random particulars of the work done by the applicant consecutively for few days, would not be sufficient enough to establish the case of the employer that the applicant is unfit to continue in service.(iii) The appointment of the applicant, having been made on a compassionate ground after a long period of waiting, cannot be so lightly terminated invoking clause 6 of Annexure II.

9. We have heard the arguments of the learned counsel on both the sides and considered the documents produced in this case. The learned counsel contended that clause 6 of Annexure II is unconscionable and cannot be resorted to for terminating the services of the applicant. He has cited the decision of the Supreme Court in Central Inland Water Transport Corporation's case,(1986)3 SCC 156. This contention need not detain us because he has not challenged

clause 6 of Annexure-II. For examining the challenge against the order, Annexure-III passed invoking the said clause, this decision is not helpful because in that case the very provision was challenged by the applicant who was a regular employee. Hence the decision is not applicable to the facts of this case. In fact the Kerala High Court in Achutan v. State of Kerala, 1974 KLT 806(FB) held "if people with open eyes choose willingly and knowingly to enter into a contractual transaction the court will not step in to relieve them of their obligations under such contract on the ground that the terms thereof are unconscionable". But the learned counsel sought to distinguish the proposition and submitted that the relationship between the 1st respondent and that of the applicant is such that the applicant has no other go but to agree with the terms and conditions and thereby he was forced to accept this condition. This submission cannot be accepted. There was no compulsion on the applicant. He entered the service after accepting the conditions in Annexure II. He cannot now, when the employer found him to be unfit for the job, raise this technical plea. There is also no materials before us to indicate that the relationship of the applicant and the 1st respondent at the time of the appointment was such that the respondents 1 and 2 are in a position to dominate the will of the applicant to obtain an unfair

advantage over him for insisting on the acceptance of clause 6 by the applicant.

10. We are also not very much impressed by the further argument that clause 6 of Annexure II is to be appreciated by dividing it into two parts and that a termination in exercise of the latter part of the clause can only be effected by assigning the reasons. This is a case of termination of service under clause 5 read with clause 6 of Annexure II. In the light of the settled legal position as explained above, the scope of enquiry is very much limited and confined only to the extent of examining whether the termination is arbitrary and on extraneous considerations with the object of removing the applicant from service even if he is found to be fit for the job. The failure to give reason in the order does not nullify it. But we are bound in the interest of justice to enquire and satisfy that the order is the result of a bonafide exercise of the power vested in the respondents. We will endeavour to find out whether Annexure-III is such an order. But we are unable to accept the first ground urged by the learned counsel.

11. For the consideration of other two grounds urged by the learned counsel we wanted some more materials. Hence we decided to post this case for further hearing on 7.8.90. The parties have filed additional pleadings and evidence.

12. The applicant had been appointed on compassionate ground as Junior Clerk on 22.6.88. But since he does not know typing he was given the simplest item of work of 'diarising and distribution of dak/letter, parcel etc., to different sections'. There were complaints

that he was not attending to the works properly and promptly. Since repeated warnings did not give desired result or improvements, the respondents decided to pass the impugned order.

13. According to the applicant, the documents at Annexure R1A to D produced by the respondents would show only random verification of few consecutive days and this cannot be made a ground for taking a decision in respect of his work as if it is a pattern for coming to the conclusion that he is unfit. By a mere examination of the work of an employee for three or four consecutive dates nobody can assume that the pattern of his work is of the same nature. We have to examine the work of the applicant for the entire period to assess whether he is fit or unfit for the job. The Kerala High Court in P.P. Varghese v. State of Kerala , 1970 KLT 979 FB, considered the issue in connection with the sales tax assessment and held as follows:-

> "... ... the question whether an inference that there has been a pattern of continuous suppression for any period must depend on the existence of materials(and/or circumstances) which affords a reasonable nexus to the inference. This means that there must be materials to indicate suppression and materials to indicate that there was a pattern of suppression".

14. Accordingly we have examined the Central Diaries written by the applicant during the entire period from the date of his appointment to the date of his termination. The following diaries/registers were perused:-

1. Central Diary : No.24 - for the period from 22.2.88 to 4.7.88 containing Sl. Nos. 1276 to 3181.

	No.25	- For the period from 5.7.1988 to 5.12.1988 containing Sl.Nos. 3182 to 7459.
	No.26	- For the period from 6.12.1988 to 17.4.1989 containing Sl.Nos. 7460 to 7814 from 1 to 1895 and from 1 to 197.
2. Co-ordination Section Diary (Cdn.Section Diary)	No.12	- For the period from 17.3.1988 to 24.9.1988 containing Sl.Nos. 1382 to 4327.
	No.13	- For the period from 25.9.1988 to 4.4.1989 containing Sl.Nos. 4328 to 6354.
3. Administration Section Diary (Admn.Section Diary)	No.10	- For the period from 21.12.1987 to 30.12.1988 containing Sl.Nos. 1141 to 1166 and 1 to 1406.

In the letter sent along with the registers and diaries the Senior Administrative Officer indicated that since some of the work were kept pending by the applicant during his period of work, he had to engage other Junior Clerks for completing the accummulated balance work.

14. The learned counsel for the applicant stated in the verified petition dated 23rd August 1990 that there is no material to support the conclusion that the applicant is unfit for the job. The available materials only show that some work was accummulated due to delay and other clerks were engaged to clear the accummulated work. A comparison of the work done by the applicant and the other clerks would show that there is no delay in the discharge of the duties by the applicant. These statements are denied by the respondents in their reply dated 7.9.90. Under these circumstances there is factual controversy on this aspect and it is difficult for us to interfere in this matter and come to a final conclusion about the nature of work done by the applicant.

15. This is not a case of no materials for arriving at a decision by the administrative authority that the

applicant is unfit for the job. When administrative authority after an evaluation of the available materials takes a bonafide decision in the best interest of the institution, the satisfaction of such an authority cannot be assailed on the ground of adequacy of materials. The satisfaction or the accuracy thereof can be challenged in two ways either by proving that the authority never applied its mind to the matter or that the authority acted malafide. Normally when an order has been issued after the subjective satisfaction of the authority, it will be accepted by the Court in the absence of any evidence to the contrary. The Supreme Court in Barium Chemicals Ltd. and another v. Company Law Board and others(AIR 1987 SC 295)observed:-

> "There is no doubt that the formation of opinion by the Central Government is a purely subjective process. There can also be no doubt that since the legislature has provided for the opinion of the government and not of the court such an opinion is not subject to a challenge on the ground of propriety, reasonableness or sufficiency."
>
> xxx xxx
>
> "If it is shown that the circumstances do not exist or that they are such that it is impossible for any one to form an opinion therefrom suggestive of the aforesaid things, the opinion is challengeable on the ground of non-application of mind or perversity or on the ground that it was formed on collateral grounds and was beyond the scope of the statute".

Thus it is upto the respondents to evaluate the work of the applicant in a fair and bonafide manner and to be satisfied that the applicant is a fit person or not for the work entrusted to him. "This satisfaction under law is subjective and it is not for the court to test the adequacy of the materials on which satisfaction is reached ... ... on a bonafide basis".(See Asha Keshavrao Bhosale vs. Union of India and another,

(1985) 4 SCC 361 and Alijan Mian vs. District Magistrate, Dhanbad, AIR 1983 SC 1130).

16. The applicant has no case that Annexure III is malafide or that it is a perverse order passed without any application of mind by the respondents. His case in the 2nd ground is that Annexure R1A to R1D with further materials produced in this case are not enough to come to a finding that the applicant is unfit for the job. At the same time he did not care to produce any evidence or other materials to satisfy us that he is efficient in the simplest item of work of 'diarising and distribution of dak/letter, parcel etc' by producing certificates or letters and other evidence of past experience in the same. His attempt was to establish that materials and evidence relied on by the respondents are not adequate enough for satisfying an authority to decide whether the person is fit or not. We find it difficult to accept this line of approach for granting relief on the facts and circumstances of this case especially when the impugned decision is not alleged to be perverse or malafide. We are unable to accept the second ground also, particularly when the respondents have established by producing the original registers, that the R1A to R1D are not isolated instances of default but that such default had occurred earlier also. Therefore, on merits we find no force in this application.

17. The last ground is intended to invoke sympathy and get reinstatement on humanitarian consideration. This would have weighed with us had there been a strong prima facie case for interference in law for justice is always tempered with mercy. Equitable considerations will weigh with the court or the Tribunal only when rules of law

favour and lean towards granting of relief. On the facts and circumstances and in the light of our findings above on grounds 1 and 2, we are unable to consider this argument. While negativing this ground we make it clear that we are leaving these considerations to the discretion of the respondents in case the applicant submits an application to them in this behalf raising all the statements in this ground and satisfy them about his capacity to do work without any default. With this observation we dismiss the application. There will be no order as to costs.

22.10.90

(N.DHARMADAN)
JUDICIAL MEMBER

22/10/90

(N.V KRISHNAN)
ADMINISTRATIVE MEMBER

n.j.j

R.A. No. 64/90.....

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by _____
T.C. Vinod (Applicant/
~~Respondent~~ in OA/~~TA~~ No. 92/87) seeking a review of
the order dated 10-4-90 passed by this Tribunal in the
above noted case.

As per Rule 17(ii) and (iii), a review petition shall ordinarily be heard by the same Bench which passed the order, and unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either dismiss the petition or direct notice to be issued to the opposite party.

The Review petition is therefore, submitted for orders of the Bench consisting of Hon. Shri N.V. Krishnan, Member (A) and Hon. Shri A.V. Haridasan, Member (J) which pronounced the order sought to be reviewed.

7/5/90

31/5

PS to ~~Hon.~~ Shri N.V. Krishnan
Member (A)

If approved
he Law for
the application
first before
any action to
the respondents

2/7/90

Hon'ble Shri N.V. Krishnan, Member (A)

I agree

2/7/90

May be on 16/7/90

2/7/90

S-II

16.7.90

NVK & ND

Mr MK Damodaran for the applicant.
Mr PVM Nambiar for the respondents.

At the request of the learned counsel for the applicant list the matter for final hearing on 25.7.90.

16.7.90

(4)

NVK & ND

Mr. M. K. Damodaran for the applicant
Mr C.S. Ramachandran for respondents

At the request of the learned counsel for the applicant the case be listed for hearing on 30.7.90.

25/7/90.

(6)

NVK & ND

Mr. M. K. Damodaran for the review applicant
Mr. C.S. Ramachandran for PVM Nambiar for respondents

Heard. The review application is allowed. The original order already rendered in O.A. 92/89 is vacated. But the case be listed for final hearing on 7.8.90. If the applicant has any reply to be furnished to the additional affidavit, let it be filed today with a copy to the respondents.

30/7/90.

Order communicated on 3.8.90.
PD 3/8.

RK