

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

CIRCUIT BENCH

LUCKNOW

(R.S)

O.A. 130/90(L)

Deepak Kumar

Applicant

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. A.B.Gorthi, A.M.

(Hon. Mr. Justice U.C.S., V.C.)

The applicant who was appointed on the permanent post of Engineering Assistant on the basis of a selection held on 5th May, 1987 by a Selection Committee, has challenged termination order dated 24.12.1988 terminating his services in pursuance of the proviso at serial Nos. 3 and 4 of the Offer of Appointment. Offer of appointment, which is on record, indicates that the post was temporary till further orders, and that his services can be terminated without assigning any reasons under Central Civil Services(Temporary Services) Rules, 1965 and on being appointed he will be on probation of two years which period can be reduced or extended and during the probationary period his services can be terminated without assigning any reasons. The applicant was first posted on the North Zone under Director, Doardarshan Kendra Punjab, on his request

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he was transferred from Jallandur vide order dated 27.7.1988 and was posted at Almora. As per allegation, at Almora, the applicant became ill and it also became difficult for him to Continue Postgraduate diploma in Computer Education. He applied for study leave for 90 days and was allowed vide order dated 27.8.88 w.e.f. 6.9.88 to 3.12.88 with a specific order to suffice 4.12.88 and 5.12.88 being weekly rest and ~~leave~~ required to join on 6.12.88. He was granted ^{leave} to join ~~leave~~ station and after availing the holiday on 2.9.88 and 3rd and 4th weekly off and 5th compensatory off he came to Lucknow. But in view of his ailment he had to go to the hospital and he was advised to get himself admitted. As per allegation he gave information to the Station Director All India Radio Almora on 6.9.88. It has been admitted in the counter affidavit in which it has been stated that vide telegram dt. 6.9.88 it was intimated that he has been hospitalised w.e.f. 6.9.88, (wrongly mentioned as 90 in the counter by respondent No. 1). The applicant was discharged but advised 42 days bed rest. The applicant pursued his study and after his discharge he informed through registered post on 10.9.88 alongwith a medical certificate of the doctor who treated him in the hospital as outdoor patient. The applicant was required to obtain a certificate from C.M.O. from the District hospital in proper form, otherwise disciplinary action was to be taken under C.C.S(C.C.A) Rules and submit the same within 15 days. The applicant received the letter on 29.8.88 and submitted a reply stating thereto that in case such a certificate is required the proforma may be sent to enable him to comply with the said

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requirement. The respondent No. 1 has stated that a specimen copy of the proforma medical certificate was sent on 12.10.88 and the applicant was advised to obtain medical certificate from C.M.O. from Lucknow and he was also advised to obtain a certificate regarding information completion of computer course. He was also advised to give a declaration that he was not doing any course and without written permission he cannot pursue any type of studies.

It appears that even though such letters were sent a memo was sent on 6.10.88 stating that as required the medical certificate in proform has not been received and office will proceed with the disciplinary action. On 25.10.88 the applicant submitted the information which he says was required from him after checking the record the copy of the certificate already submitted. The applicant was again hospitalized on that very date and was discharged on 7.11.88 and was advised to take rest for 6 weeks. After obtaining the required certificate from C.M.O. Lucknow, he submitted on 15.11.88, he submitted the same on 16.11.88. As per allegation the applicant was discharged on 7.11.88 and was given the outdoor for checkup and he accordingly visited the hospital on 17.11.88, 29.11.88 and again on 8.12.88 and thereafter again on 17.12.1988. During this period he was served with the termination notice dated 24.12.88 mentioning therein that he was not entitled for any pay and allowances for the period of notice. The applicant submitted an appeal / a review application against the termination order to the Chief Engineer, North Zone, New Delhi who is the Head of Department and appointing authority but he was advised that he should

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take up the matter with the respondent No. 1 vide letter dated 29.7.89 received on 8.8.89. The applicant requested respondent No. 1 to intimate order received by respondent No. 3 and 4 and on 21.10.89 the respondent No. 1 communicated the gist of the order said to have been passed and as per allegation his representation dated 9.1.91 was not considered but the one which was sent on 18.9.89 was considered. In the counter affidavit by respondent 1 it has been stated that no study leave was granted to the applicant and only condition on EQL sanctioned which was sanctioned on 31.8.88, the intimation of which was given to the applicant verbally. In response to this cancellation he applied for leave with the condition that he will resume duty on 6.9.88 and it was Station Director appointing authority and Chief Engineer was the recruiting authority. It has also been stated by the affidavit that the applicant had obtained the certificate from a Consultant physician and not from the C.M.O. who is the competent authority.

The question that has been conveyed by the learned counsel for the applicant that his service could have been terminated only by the appointing authority and not by the respondent No. 1 who was not his appointing authority. Offer of appointment to the applicant was given by the Chief Engineer Northern Zone, All India Rail and in pursuance of the same the applicant was posted at Doordarshan Kendra Jallandur where he joined. The applicant was transferred under the orders of Chief Engineer, his Northern Zone, Almora on/representation which was one of the stations in the northern zone like Jallandur. The applicant has also filed document indicating that for

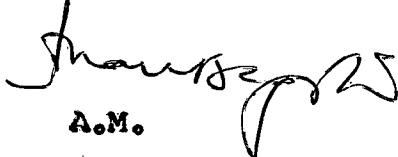
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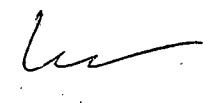
such post advertisement was subsequently issued by the Chief Engineer, Northern Zone. These facts indicate that it was the Chief Engineer who was the appointing authority. The Station Director All India Radio who transferred the applicant, could not be the appointing authority and consequently the termination order has been passed by the authority who is lower than the appointing authority and the termination order is liable to be quashed on this ground alone. Even the version of the respondent No. 1 that the leave was cancelled orally which was granted in writing obviously, is not correct, although the respondent No. 1 has vaguely asserted this fact but it is regrettable that an officer will not come to the extent of saying such thing. An official order which is passed in writing can be cancelled only in writing and not orally. It is true that the applicant was on probation and he was a temporary employee, he was governed under C.C.S. rules under which notice or salary in lieu thereof is given. In the instant case neither notice, nor salary was given and thus the termination order is violative of the C.C.S. rules. A reference may be made to the case of Kusam Gupta vs. Haryana State Small Industries (1986) 3 SCC 506.

The facts stated above will indicate that the order of termination was passed as a result of annoyance or by way of punishment. Medical certificate was demanded by the respondent No. 1 in the prescribed proforma and the prescribed proforma was despatched from the office on 12.10.88 which was received by the applicant on 21.10.88 and even prior to the sending of the proforma and even before that the respondent No. 1 vide his

which case the termination order was held invalid as no notice or salary in lieu thereof was given.

letter dated 6.10.88 threatened that in case a medical certificate in prescribed form will not be received on due date the disciplinary proceedings against the applicant will be taken. The facts indicated above show that instead of taking disciplinary action it was the penal action taken against the applicant. Undoubtedly probationer's services can be terminated without assigning any reason, no such order can be arbitrarily passed as an arbitrary order is violative of Article 311 of the Constitution of India. In the instant case it has not been stated that post has been abolished but the applicant has proceeded on leave and without enquiry his services were terminated. The termination order being penal in nature and without giving an opportunity of hearing is violative of Article 311 of the Constitution of India. The termination order dated 24.12.88 is quashed and the application is allowed. The applicant will be deemed in service from the date of termination with all consequential benefits. No order as to costs.


A.M.


V.C.

Shakeel/

Lucknow Dt. 5.7.91.