

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 29/2008

Reserved on 24.2.2015

Pronounced on 05/3/15

Hon'ble Sri Navneet Kumar , Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Km. Neetu Singh d/o Sri Ramang Singh aged about 20 years
resident of 486/ Sheikupura Colony, Aliganj, Lucknow.

Applicant

By Advocate: Sri Praveen Kumar

Versus

1. Union of India through its Director General, Central Institute of Medicinal & Aromatic Plants, New Delhi.
2. Director, Central Institute of Medicinal & Aromatic Plants,, Picnic Spot Road, Lucknow.
3. Controller of Administration, Central Institute of Medicinal & Aromatic Plants, Picnic Spot Road, Lucknow.
4. Kanak Lata Mishra, Section Officer, Central Institute of Medicinal & Aromatic Plants, Picnic Spot Road, Lucknow.

Respondents

By Advocate: Sri P.K.Awasthi for Sri A.K.Chaturvedi

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present O.A. is preferred by the applicant under Section 19 of the AT Act with the following reliefs:-

- i) That the Hon'ble Tribunal may graciously be pleased to allow the application quashing the order dated 11.12.2007 passed by respondent No. 3, as contained in Annexure No. A to this original Application with direction to the respondents to reinstate the applicant in service with all consequential benefits along with arrear of salary and back wages.
- ii) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the case.

2. The brief facts of the case are that the applicant was initially appointed in the respondents organization on the post of Helper Grade I. In pursuance of that order of appointment, the applicant

joined and was posted to work in Product Lab (HTP). The order of appointment was issued on 19.1.2006 and the applicant joined on 27.1.2006 and by virtue of order dated 30.1.2006, she was asked to work in product lab.

3. After serving for a period of about 10 months, the applicant submitted a complaint for misbehavior by one Smt. Kanaklata Mishra and has also submitted a complaint to the Director SC/ST Commission. The applicant has also written a letter to SSP, Lucknow for registering an FIR against Smt. Kanaklata Mishra and alleges that she has been harassed by the staff of the respondents organisation, as such an action may be taken.

4. The applicant was placed under suspension which was subsequently revoked in the month of April, 2007 and in pursuance of the said revocation order, the applicant was posted in Seed Testing Laboratory to work under Dr. Birendra Kumar, Scientist and will be under observation. Subsequently, the respondents came to the conclusion and passed an order dated 11.12.2007 through which in terms of para 4(a) of appointment order dated 19.1.2006 and clause 5 of Temporary Servants Rules, terminated the services of the applicant and in lieu of one month notice, one month salary is paid to the applicant. The applicant challenges the same by means of the present O.A., and alleges that only on the basis of complaint given by her against Smt. Kanaklata Mishra, the respondents passed the termination order with an vindictive approach and the said termination order is not simpliciter, it is punitive in nature as such it requires interference by this Tribunal.

5. On behalf of the respondents, detailed counter reply is filed and through counter reply, it is indicated by the respondents that the complaint so submitted by the applicant to the Director SC/ST Commission as well as to the Director of the respondents organization, a committee was constituted and as per the said committee, the complaint of the applicant as well as complaint

against the applicant were examined by three members committee and the committee submitted the report to the Director Central Institute of Medicinal & Aromatic Plants (in short CIMAP) and it is also argued by the learned counsel for the respondents that the applicant was initially appointed for a period of one year on probation basis and the said probation period was extended upto 26.1.2008 and during the said probation period, the services of the applicant was terminated.

6. It is also argued by the learned counsel for the respondents that the applicant accepted the terms and conditions of the appointment order and only after accepting the same, she joined the respondents organization. Sri Pankaj Awasthi for Sri A.K.Chaturvedi also argued and submitted that on number of occasions, the applicant refused to perform the given task and keeping in view of non-compliance of orders are against the office decorum which may lead to further deteriorate of work culture and the same amounts to gross indiscipline. It is also argued by the learned counsel for the respondents that since the date of joining, the applicant was a trouble creator as such the administration decided to extend the probation period of the applicant and when she could not approve herself, the authority finally decided to terminate the services of the applicant and there is no illegality in doing so, as such the present O.A. does not require any interference by this Tribunal. The respondents have also filed Supple. Counter Reply which is perused and taken on record.

7. On behalf of the applicant, Rejoinder Reply is filed and through Rejoinder Reply, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied. Not only this, the learned counsel for the applicant has also relied upon the decision of the Hon'ble Apex Court in the case of **State Bank of India and others Vs. Palak Modi and another reported in (2013) 1 Supreme Court Cases (L&S) 717** and has also

relied upon a decision of the Hon'ble Apex Court in the case of **Radhey Shyam Gupta Vs. U.P. State Agro Industries Corporation Ltd. and Another reported in JT 1998 (8) SC 585** and a decision of Hon'ble High Court in the case of **Rajvir Singh Vs. State of U.P. reported in 1998 (16) LCD 431** and has indicated that if the termination order is issued at the back of the officer, such an order will be violative of Principle of Natural Justice.

8. Learned counsel for respondents has relied upon a decision of the Hon'ble Apex Court in the case of **Pavendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and another reported in (2002) 1 SCC 520.**

9. Heard the learned counsel for parties and perused the records.

10. The controller of Administration informed the applicant in respect of proposal of her appointment to the post of Helper Group I reserved for Scheduled Caste in the pay scale of Rs. 2550-3200 with instructions to furnish character certificate issued by the Gazetted officer and countersigned by the Ziladhikari/ Up Ziladhikari. Subsequently, the applicant submitted the required documents and vide order dated 19.1.2006, the applicant was appointed on the post of Helper Grade I, the appointment order indicates the terms and conditions. The bare reading of the terms and conditions mentioned by the respondents in the appointment order are clear to the extent that the applicant will be on probation for a period of one year which may be extended or curtailed at the discretion of the competent authority and on satisfactory completion of probation period, the applicant will be eligible for continued appointment on the existing terms and conditions of service. For ready reference, clause 2 of the said appointment

order reads as under:-

“2. You will be on probation for a period of one year which may be extended or curtailed at the discretion of the competent authority. On satisfactory completion of the period of probation, you will be eligible for continued appointment on the existing terms and conditions of service.”

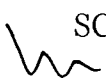
11 Apart from this, clause 4(b) of the said appointment order provides for notice and respondents reserves the right of terminating the service. Clause 4(b) reads as under:-

“4. Your service may be terminated as follows:-

(a).....

4(b) At an time by a month's notice on either side , viz the appointee or appointing authority, without assigning any reason. The appointing authority also reserves the right of terminating the service of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to you of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.”

12. In terms of the said appointment order, the applicant submitted her joining on 27.1.2006 and she was posted under Dr.R.P.Bansal in Product Lab by means of order dated 30.1.2006. Not only this, the period of probation was extended from 21.1.2007 to 26.7.2007 for a period of six months and subsequently it was extended from 27.7.2007 to 21.6.2008. The said extension orders were issued on 1.3.2007 and on 26.7.2007 and has also indicated that terms and conditions of the order of appointment will remain the same. Prior to the said dates of extension, the applicant submitted a complaint in respect of misbehavior of one Smt. Kanaklata Mishra and has also written a complaint to the Director SC/ST Commission, Govt. of India, Lucknow. The said compliant



was written by the applicant on 13.11.2006 and 29.1.2007. It is also to be pointed out that applicant refused to do the given task on number of times and for which the authorities have observed that it is a gross misconduct and it will further deteriorate the work culture in the department and for this act of non-compliance of order was condemned by the authorities. This act was done by the applicant some time in the month of May 2006 for which, note was put up to the authorities of the concerned officer.

13. The complaint so submitted by the applicant to the Director SC/ST Commission was taken cognizance and the matter was referred by the said commission to the Director, CIMAP and on the basis of reference made by SC/ST Commission, inquiry officer was appointed who submitted the report. After considering the report of the committee in which initially due opportunity was given to the applicant to appear before the inquiry committee on different dates but the applicant failed to appear before the committee. Subsequently, the members of the committee again decided to serve notice upon the applicant and fixed the date on 13.3.2007 and finally on the said date, the applicant appeared before the committee and the statement of the applicant was recorded and she also levelled certain allegations against the other staff members including the administrative officer. The committee finally submitted the findings and after considering every circumstances and act of the applicant, the respondents finally came to the conclusion to terminate the services of the applicant and paid her one month salary in lieu of notice as provided in the appointment order.

14. The applicant was granted due opportunity to participate before the inquiry officer duly constituted as such, it cannot be said that the order of termination was passed on the back of the applicant, as such there is no violation of principle of natural justice.



15. Even if, order of termination of temporary employee's service passed in terms of appointment order shortly after expiry of extended probation period, stating that even during that period his work and conduct has not been found to be satisfactory, such an order cannot be treated as ex-facie stigmatic and even mentioning this fact that the employee is unable to meet the requirements of the post, even then the termination order cannot be held as a punitive.

16. As observed by the Hon'ble Apex Court in the case of **State Bank of India and others Vs. Pulak Modi reported in (2013) 3 SCC 607** "Probationer has no right to hold post and his services can be terminated at any time on grounds of unsuitability." The applicant was a temporary Govt. servant and her probation period was extended two times for six months each beyond initial one year period and the applicant was on probation at the time of termination. The applicant was on probation at the time, the termination order was passed cannot be termed as illegal or punitive in nature.

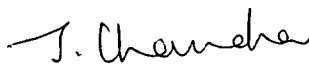
17. It is to be pointed out that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by a probationer.

18. In the instant case, it is explicitly clear that the applicant was a probationer at the time of termination order was passed. A combined reading of appointment order is clear to the extent that the services of the applicant can be terminated at any time by a month's notice by either side or one month's salary in lieu thereof.

19. As such, it cannot be said that the order of termination is stigmatic or punitive in nature. The work and conduct of the applicant was not found satisfactory by the authorities. The judgments so cited by the applicant are not applicable in the

present case. As such we are not inclined to interfere in the present O.A.

20. Accordingly , the O.A. is dismissed. No order as to costs.


(JAYATI CHANDRA)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER(J)

HLS/-