(11)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No.
T.A. No. 403,404 and 405 of 1987. 198

DATE OF DECISION 20.4.90.

N.M.Channal, K.K.Selvam & N.I.Pardeshi — Petitioner

Mr. V.B.Rairkar, — Advocate for the Petitioner(s)

Versus

Union of India. — Respondent

S/Sri M.I.Sethna and V.S.Masurkar, — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. M.V. Priolkar, Member(Admn).

1. Whether Reporters of local papers may be allowed to see the Judgement ? X
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? X

(G.Sreedharan Nair)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH : NEW BOMBAY.

Tr.A.403/87,404/87 and 405/87.

N.M.Channal ... Applicant in Tr.A. 403/87.

Krishnamurti Kalai Selvam ... Applicant.in Tr.A. 404/87.

Narendra I.Pardeshi ... Applicant in Tr.A.405/87.

P R E S E N T :

The Hon'ble Sri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri M.Y.Priolkar, Member(Admn).

For the applicants - Shri V.B.Rairkar, Advocate.

For the respondents - Sri M.I.Sethna and Shri V.S.Masodkar, Advocates.

Date of hearing and judgment- 20.4.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman.

These applicants relate to three transferred suits. They were heard together and are being disposed of by a common order as the issue involved is identical.

2. The applicant in Tr.A. 403/87 was appointed to the post of Safaiwala under the Commandant, Armed Forces Medical College,Pune by the order dated 2.7.1984. The applicant in Tr.A. 404/87 was appointed as a Limb-maker Carpenter under the Commandant, Artificial Limb Centre, Pune, with effect from 1.3.1982 and the applicant in Tr.A. 405/87 was appointed as a Limb-maker in the office of the Commandant,Artificial Limb Centre,Pune, with effect from 1.3.1982. All these ~~appointe~~ appointments were made with the specific stipulations that the appointees shall be on probation for a period of two years and their services shall be terminated if their work was not found satisfactory. On the ground that their performance during the probationary period was not satisfactory, their services were terminated. As regards

the applicant in Tr.A. 404 and 405 of 1987, the period of probation was actually extended to afford them an opportunity of being absorbed themselves.

3. The applicants have prayed for a declaration that the orders terminating their services is illegal. Two ppints have been urged. Firstly, it is stated that on the expiry of the period of probation they stood automatically confirmed and further extension of the period of probation was unwarranted. Secondly, it is stated that the order of termination is violative of the principles of natural justice as opportunity of show cause was not given. The order of termination is also said to be punitive.

4. In the replies filedon behalf of the xx employers, it is contended that since the termination of service is on the ground of unsatisfactory performance during the period of probation as well as during the extened period, there is no stigma cast, the order is not punitive and, as such, there is no violation of the principles of natural justice. The plea of the applicants that the extension of the period of probation is unwarranted, is disputed.

5. When these applications were taken up for hearing, the applicant in Tr.A.404/87 did not appear, nor was there any representation on his behalf. We have heard Advocate Mr V.B.Rairkar on behalf of the applicants in the other two applications and Advocates Mr M.I.Sethna and Mr V.S.Masurkar on behalf of the respondents.

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6. The point that was pressed on behalf of the applicants was that though there is a provision in the order of appointment that the services will be terminated without notice in case the work of the applicants is not found satisfactory during the period of probation, since the termination of service on the ground of unsatisfactory performance during the probationary period casts a stigma on the applicants, the order is really punitive, and inasmuch as it has been passed without notice to the applicants it is bad in law. We are unable to agree. The concerned files have been made available by the counsel of the respondents from which it is clear that the respondents had been acting only bonafide by affording opportunity to these applicants to improve themselves in their performance of their duties during the period of probation, and when they were not able to come up to the mark, the period of probation was itself extended in the case of the applicants in Tr.A.404/87 and Tr.A.405/87. It was only on account of the fact that even after extension of the period they proved themselves unsuitable for absorption on regular basis that the order of termination was made. Such termination of service on the ground of unsatisfactory performance during the period of probation cannot be said to be punitive, so as to attract Article 311 of the Constitution of India. Hence the submissions of the counsel of the applicants that since opportunity was not afforded to the applicants before issuing the orders of termination there has been violation of the principles of natural justice, and the order of termination is bad in law, cannot be accepted.

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7. Counsel of the applicants placed reliance on the decision of the Supreme Court in Anoop Jaiswal v. Govt of India, AIR 1984 SC 636. Though the case also related to termination of service of a probationer, the order was struck down on the ground of denial of reasonable opportunity of defence since it was found that the dismissal was really for misconduct, though the order purported to be innocuous on the face of it.

8. The second point urged by the counsel of the applicants that on the expiry of the period of probation, the applicants should be treated as having been confirmed and hence the order of termination passed thereafter without notice is illegal, is also equally devoid of merit. When the termination of service is made on the ground of unsatisfactory performance during the period of probation, it cannot be expected that the order is to be passed immediately on the expiry of the period of probation. Reasonable time has necessarily to be allowed for the purpose of assessment of the performance of the employee and if after such assessment the termination of service is done on the ground of unsatisfactory performance during the probationary period, the termination is not open to question.

9. It follows that these applications are to fail, and they are accordingly dismissed.

20-4-90

(M.Y.Priolkar)
Member(Admn)

20-4-1990

(G.Sreedharan Nair)
Vice Chairman.

S.P.Singh/
20.4.90