

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.24/86.

Shri S.T.Jadhav,
Room No.84,
Chikuwadi,
Anushaktinagar,
North Gate,
Bombay.400 094.

... Applicant

V/s.

T.J.Asnani,
Office Head,
Personnel Division,
Bhabha Atomic Research Centre,
Central Complex,
Bombay.400 085.

... Respondent.

Coram: Vice-Chairman, B.C.Gadgil,
Member(A), J.G.Rajadhyaksha.

JUDGMENT:

Dated 31-10-1986.

(Per B.C.Gadgil, Vice-Chairman).

The applicant who was a Tradesman 'C' with Bhabha Atomic Research Centre (hereinafter referred to as BARC), Trombay has filed this application complaining about his termination of service, an order dated 13.9.1985.

2. A few facts are not in dispute. In November, 1980 the applicant was selected for training for the post of Tradesman 'C' with BARC. After the training was over he was so appointed in November, 1982. There is some dispute as to whether the appointment letter has actually been received by the applicant. However, that would not matter much inasmuch as the Respondents have produced a copy of the appointment order at Ex.I of their affidavit in reply. In substance his appointment was on probation for one year. On 1.4.1983 the applicant was arrested along with certain other persons on a Criminal Charge of rioting and murder. It appears that the Sessions case was filed against the ...2.

applicant and it is still pending in Session Court. Under Rule 10(2) of the Central Civil Services (Classification, Control and Appeal) Rules, a person who would be in detention of 48 hours shall be under suspension from the date of such detention. Consequently, a formal order was issued by the Administration that the applicant has been kept under suspension under this Rule. The probation period of the applicant was extended from time to time. The last such extension is dated 13.5.1985 whereunder the probation was extended upto 31.11.1985. On 13.8.1985 the Administration issued an order (vide page.23 of the compilation) forthwith terminating the services of the applicant. It is this order that is being challenged by the applicant.

3. The learned advocate for the applicant raised two contentions. He contended that the selection of the applicant for training did not envisage an appointment of probation. He also urged that the appointment order has not been received by him. In our opinion, this point is without any substance. The order selecting the applicant for training is not expected to contain all the terms on which the applicant would be appointed if he successfully completes the training. The terms and conditions of the appointment would ultimately be incorporated in the appointment order and it cannot be disputed that the appointment order dated 17.11.1982 specifically states that the applicant would be on a probation for one year. We have already observed that the applicant has

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contended that he has not received the said appointment order. However, the record produced by the Respondents does show that the order has been issued and served on the applicant.

4. The second contention of the applicant is that the order in question, in substance is an order of punishment by way of removal from service though it is worded in such a manner as to suggest that it is a termination simplicitor. It was urged by Mr. Natrajan that a penalty of removal was thus inflicted without holding any enquiry. As against this the contention of the Respondents is, that the impugned order is a termination simplicitor and that it was not by way of any penalty. It is now an accepted position of law that ordinarily a termination of service which is ex-facie not penal and which does not cast any stigma should not be presumed to be penalty. Of course there may be circumstances in which such simple order of termination can, in substance be a penalty. However, much will depend upon the facts of each case.

5. Another limb of the submission of Mr. Natrajan is that services of a probationer can be terminated only if he is found un-suitable and that there is nothing to suggest that the applicant was un-suitable to hold the post. It may be noted that the applicant had put in about 4 months and 14 days of service before his suspension from April, 1983. The suspension was the result of the detention of the applicant in custody for more than 43 hours. There is much substance in the contention of the Respondents that the department would have terminated the services immediately if the said detention was to be a foundation for inflicting penalty

Instead of having that recourse the Department put the applicant under suspension. This is an indication that the Department never intended to punish the applicant simply because he has suffered a detention for more than 48 hours. Therefore, it will be very difficult to hold that order in question is by way of penalty.

6. Mr.Natrajan submitted that there was no occasion for the Department to watch the work of the applicant after he was put under suspension and that in the absence of such occasion termination of a probationer will be bad. It cannot be forgotten that the applicant's probation period has been extended from time to time for about 2 years. The administration felt that it would not be in the interest of the administration to keep the applicant under suspension and to go on extending the probation period indefinitely. It was rightly submitted on behalf of the Respondents that in the background of this situation, the administration has taken a correct view that the services of a probationer should be terminated by an order which does not cause any stigma on the applicant.

7. We have already observed that the order is that of a termination simplicitor. The circumstances connected with that order do not indicate that the administration wanted to punish the applicant. In fact what they did is to terminate the services of a probationer under the circumstances mentioned above. It will be very difficult for the applicant to

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contend that such termination of service should be struck down as bad. The application is therefore dismissed. No order as to costs.

B.C. Gadgil 31/10
(B.C. GADGIL)
VICE - CHAIRMAN

J.G. Rajadhyaksha 31/10/86
(J.G. RAJADHYAKSHA)
(MEMBER (A)).

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Shataram 31/10/86
Advocate for Applicant -

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VAPUR 31/10/86
For Respondent.