

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 705/96

Date of Decision: 8-9-99

S.N.Sawant

Applicant.

Shri S.P.Kulkarni

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.S.Karkera for Shri P.M.Pradhan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

Hon'ble Shri. S.L.Jain, Member (J)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

D.S.Baweja
(D.S.BAWEJA)
MEMBER (A)

Respondent(s)

Advocate for
Respondent(s)IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

COURT:

Original Application No:
Hou, Pte Subj.

Date of Decision:

Hou, Pte Subj.

(1) To the letter to the Registrar of

(2) Whether it needs to be circulated to
other Branches of the High Court
Applicant.

Respondent(s)

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(1) To the letter to the Registrar of

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A.No.705/96

Dated this the 8th day of September 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Sunil Nilkanth Sawant,
R/o. C-10/18,
Shivaji Nagar, Vakola Bridge,
Santacruz (East),
Mumbai.

... Applicant

By Advocate Shri S.P.Kulkarni
V/S.

Union of India through
1. Deputy Chief Post Master(Gazetted),
Kalbadevi Head Post Office,
Dhobi Talao,Near Metro Talkies,
Mumbai.

2.Chief Post Master General,(H.O.D.),
Maharashtra Circle, Old G.P.O.Bldg.
2nd Floor, Near C.S.T.,Fort,
Mumbai.

3.Chief Post Master (P.S.Group'A'
(J,Kalbadevi Head Post Office,
H.P.O.Building,Near Metro Talkies,
Dhobi Talao, Mumbai.

... Respondents

By Advocate Shri S.S.Karkera
for Shri P.M.Pradhan

O R D E R

(PER : Shri D.S.Baweja, Member (A)

This O.A. has been filed by the applicant challenging the
order dated 12.2.1992 by which his services while as temporary
Postman,Kalbadevi Head Post Office have been terminated.

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2. The applicant was engaged initially as a casual labourer on 14.4.1982 on monthly payment basis on daily rate and assigned the work of Postman at Kalbadevi Head Post Office. The applicant was regularly absorbed as a Postman w.e.f. 24.9.1991. The appointment was on probation for a period of two years commencing from 24.9.1991. However, as per impugned order dated 12.2.1992, the services of the applicant were terminated forthwith and he was relieved from duty on the same date under Rule 5 of Central Civil Services(Temporary Services) Rules, 1965. The applicant made a revision application against the termination order on 11.3.1992 and the same has been dismissed by the Chief Postmaster General as per order dated 24.5.1996. Thereafter, the applicant has filed the present OA. on 10.7.1996 seeking the setting aside of the impugned termination order.

3. The applicant has challenged his termination of services on the following four grounds :- (a) The applicant has not been paid one month's pay as notice/pay on the date of termination of services and therefore the termination is bad in law as per the provisions of Rule 5 of CCS (T.S.) Rules, 1965. (b) The termination order is stigmatic as in the order it is mentioned that the services are being terminated on account of unsatisfactory work. (c) The impugned punishment order is punitive in nature as is clear from the order of the revision authority wherein he has recorded the finding with regard to

of the applicant
guilt with reference to Secretion of 20 undelivered letters dated 6.5.1991 and posting/throwing them in letter box of Santacruz (East) on 12.6.1991 after their detention in personal custody etc. and by holding an enquiry at the back of the applicant.(d) The temporary employees are also covered by protection provided under Article 311 (2) of the Constitution of India and therefore the services of the applicant could not be terminated without following the disciplinary proceedings rules laid down for imposing penalty of removal from service.

4. The respondents have filed written statement contesting the grounds of the applicant in challenging the impugned termination order. The respondents contend that the applicant was appointed as a Postman on two years of probation and during this period, the work of the applicant was not found satisfactory. The applicant was not delivering the letters and also found letters re-posting in the Post Office in the area where the applicant was residing. The respondents further submit that the revision authority while considering the application of the applicant has recorded the reasons as to why the termination of services of the applicant was called for. The respondents also state that the mere mentioning in the termination order that the services have been terminated due to unsatisfactory work does not vitiate the order of termination. The respondents plead that the action taken by them for termination is in accordance with the rules and is therefore just and proper and ~~according~~ the applicant is not

entitled for the relief prayed for. The respondents have also as strongly opposed the application/being barred by limitation as the cause of action arose in 1992 while the present OA. has been filed only in 1996. The respondents contend that disposal of his review petition cannot be taken as base for condoning delay as the applicant ought to have challenged his termination order at the appropriate time.

5. The applicant has not filed any rejoinder reply for the written statement.

6. We have heard the arguments of Shri S.P.Kulkarni, 1d. counsel for the applicant and Shri S.S.Karkera for Shri P.M.Pradhan, 1d. counsel for the respondents.

7. As detailed earlier, the applicant has challenged the termination order on four grounds. The first ground with regard to non-payment of the pay for notice period was not pressed by the counsel for the applicant during hearing stating that some payment has been already made. The second and the main ground is that the termination order is stigmatic in nature as it indicates the reasons for termination. The applicant contends that Rule 5 of CCS(T.S.) Rules, 1965 does not stipulate indicating of any reasons for termination of services. The respondents have/strongly contested this submission of the applicant stating that mere mentioning of termination of services

on account of unsatisfactory work in the termination order does not make the order stigmatic. From the averments made by the respondents in the written statement and the order of the review authority dated 24.5.1996, it is noted that the performance of the applicant was not found satisfactory. The applicant was given repeated warnings by his superiors but there was no improvement in his working. Further, the applicant was on probation period of two years and as per the terms and conditions, the services could be terminated for non-satisfactory work during this period. In view of these facts, we subscribe to the view of the respondents that mere mentioning that the services are being terminated due to unsatisfactory work in the order does not make it stigmatic. In this connection, we draw the support from what is held by the Hon'ble Supreme Court in the recent judgement in the case of Kunwar Arun Kumar vs. U.P.Hill Electronics Corporation Ltd. & Ors., 1997 SCC (L&S) 558. In this case, the services of petitioner were terminated mentioning that during the period of probation, his work performance was found unsatisfactory. The petitioner had challenged the termination order before the High Court and the Hon'ble High Court dismissed the writ petition. Thereafter, the petitioner came before the Hon'ble Supreme Court. The appellant before the Hon'ble Supreme Court argued that the finding recorded in the termination order amounts to stigma and

action of
Terminating services taken without enquiry is violative of Article 311 of the Constitution of India and rules made thereunder. The Hon'ble Supreme Court did not accept this contention and observed as under :-

"The reasons mentioned in the order may be a motive and not a foundation as a ground for dismissal. During the period of probation, the authorities are entitled to assess the suitability of the candidates and if it is found that the candidate is not suitable to remain in service they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation. Under these circumstances, necessarily the appointing authority has to look into the performance of the work and duties during the period of probation and if they record a finding that during that probation period, the work and performance of the duties were unsatisfactory, they are entitled to terminate the service in terms of the letter of appointment without conducting any enquiry. That does not amount to any stigma. If the record does not support such a conclusion reached by the authorities, a different complexion would arise. In this case, they have recorded the finding that the petitioner was regularly absent on one ground or the other. Under these circumstances, the respondents terminated his services. We do not find any illegality in the action taken by the respondents."

In the present case, as stated earlier, the respondents have recorded the findings with regard to unsatisfactory work of the applicant as brought out in the written statement as well as the order of the review authority. There is no denial of the same by the applicant. Keeping in view what is held by the Hon'ble Supreme Court in the above cited judgement, we have no hesitation to hold that the contention of the applicant that the termination order is stigmatic is not sustainable.

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8. The third ground is that the termination order is punitive in nature as findings recorded in the order of the reviewing authority had been arrived at by conducting some investigation at the back of the applicant. Since the order is punitive in nature, such an enquiry could not be held without giving any opportunity to the applicant to defend his case. The counsel for the applicant during arguments cited the judgement in the case of Anoop Jaiswal vs. Government of India & Anr. 1984 SCC (L&S) 256. In this case, the Hon'ble Supreme Court has held that where the form of the order is merely a camouflage for an order of dismissal for misconduct, it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. Even though the order of discharge may be non-committal, it cannot stand alone. Where the report/recommendation of the superior authority is the basis or foundation for the order, that should be read along with the order for the purpose of determining its true character. Keeping these observations of Hon'ble Supreme Court in this judgement in view, we have carefully gone through the order of the reviewing authority. We are unable to subscribe to the contention of the applicant that the reviewing authority has recorded findings with regard to misconduct of the applicant. We find that the order is a speaking order giving reasons which led to form an assessment that the work of the applicant was

unsatisfactory. The incidents cited by the reviewing authority relate to non-delivery of the postal articles and bringing back the same undelivered and leaving these articles at his table. The applicant had also indulged in re-posting the letters in the letter box at the place where the applicant was residing. The applicant was questioned with regard to re-posting of letters in the post box and the applicant had admitted of having done so. Repeated warnings were given to him and he was also advised by his superiors to improve his performance. ^{also} We find from the averments in the OA. that there is no denial on the part of the applicant with regard to incidents detailed in the order of the review authority. In fact, the applicant admits of his unsatisfactory performance but he has attributed to ^{being novice} his sickness and ^{to} to the post of Postman. This argument of the applicant is not tenable as indicated by the respondents ^{he had sufficient experience} working as adhoc ^{of} Postman before being regularised as Postman. The applicant has also contended that the review authority's finding of guilt of Secretion and throwing of Postal article which is a punishable offence under Section 52 of I.P.O. Act is arrived at behind the back of the applicant without offering him any opportunity to defend. On going through the review authority's order, we do not find any findings having been recorded with regard to offence having been committed under

Section 52 of I.P.O. Act. The review authority has only recorded instances of the irregularity in discharging his functions as a Postman.

It is normally the duty of the Postman to deliver the letters and in case there are any lapses in carrying out this duty, it can be of nothing else but termed as unsatisfactory performance. We find from the order of the review authority that there was sufficient material before him to come to the conclusion of unsatisfactory work and conduct of the applicant as a Postman in discharging his duties. The preliminary investigation which appears to have been done by questioning the applicant with regard to his functioning as Postman, is the motive and not the foundation for termination. We are of the view that the order of the review authority does not record any of guilt as findings but is only assessment of the performance of the applicant with a view to decide whether he is required to be retained or discontinued from service. In this connection, we refer to the judgement of the Hon'ble Supreme Court cited by the applicant in the case of Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. & Anr., 1999 SCC (L&S) 439. In this Judgement, the Hon'ble Supreme Court viewing the earlier judgements has held that where the motive behind the preliminary enquiry is not to determine the misconduct

but merely to decide the question of retention in service, the termination cannot be held punitive. As discussed earlier, we find that the reasons cited by the review authority in his order are sufficient for the authority to come to the conclusion that the applicant is not fit for retention period in service during the probation as laid down by the Hon'ble Supreme Court as cited above. In view of these observations, we are unable to accept the contention of the applicant that the termination order is punitive in nature.

9. The last ground taken by the applicant is that even in respect of temporary servant, the protection of Article 311 (2) of Constitution of India is available and therefore the services of the applicant could not be terminated without holding disciplinary proceedings and conducting of enquiry before imposing the punishment of termination of services. This contention of the applicant is not tenable in view of our findings above. The services of the applicant have been terminated during the probation period on account of unsatisfactory performance. This action of the respondents is in terms of the service conditions and therefore no disciplinary proceedings enquiry was required to be held for termination of services. In view of this, it is not necessary to go into the merit of this contention of the applicant.

10. In the light of the above discussion, we are unable to find any merit in the OA. and the same is accordingly dismissed with no order as to costs.

S.L.Jain
(S.L.JAIN)
MEMBER (J)

D.S.Bawej
(D.S.BAWEJA)
MEMBER (A)

mrj.