

**CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO:535/2000  
DATED THE 18TH FEB, 2002**

**CORAM:HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN  
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)**

Mr.Akhilesh Kumar Vidhyarthi,  
R/o.C/o.R.V.Babrekar,  
31, Suyog, Nandanwan Colony,  
Aurangabad. .... Applicant

By Advocate Shri V.N.Tayade

V/s.

1. Union of India,  
(Through its Secretary),  
Human Resources Development  
Department, Ministry of Education,  
New Delhi.
2. Kendriya Vidyalaya Sangathan  
(Through its Commissioner),  
18, Shaheed Jeet Singh Marg,  
Institutional Area,  
New Delhi-110 016.
3. The Assistant Commissioner,  
Kendriya Vidyalaya Sangathan,  
Mumbai Region, IIT Powai,  
Mumbai - 400 076.
4. Kendriya Vidyalaya,  
(Through its Principal),  
Nagar Naka, Cantonement,  
Aurangabad - 431 002. .... Respondents

By Advocate Mrs.H.P.Shah

**(ORAL)(ORDER)**

**Per Smt.Shanta Shastry, Member(A)**

The services of the applicant, a primary teacher in the Kendriya Vidyalaya, Aurangabad were terminated vide impugned order dated 1/2/2000. Aggrieved the applicant has approached this Tribunal to quash the aforesaid termination order. As an interim relief, he has prayed for a direction to respondents to reinstate him with full backwages.

2. According to the applicant his termination order is a motivated order and not a simplicitor termination. The Principal of the school was biased against the applicant and therefore his services were terminated.

3. The applicant was initially appointed on 2/9/97 on probation for two years. His probation period was extended up to 15/9/2000 vide order dated 29/7/2000. During the extended period of probation, the applicant was asked to take the students on a sports trip from 21st to 23rd September, 99. He was given a certain amount for expenses during the trip. On return from the trip applicant had returned an amount of Rs.354/- as the balance amount. The Principal however had enquired with the students and the applicant was placed under suspension as according to the enquiries made from the students and the discussion in the meetings of the Executive Committee held on 7/12/99 and 5/1/2000, it was held that the applicant's claim of certain amounts towards auto charges and D.A of students, purchase of glucose, etc was false. Therefore it was ordered vide order dated 27/1/2000 to recover an amount of Rs.1261/- from the pay/subsistence allowance payable to applicant from the month of January, 2000 and to transfer the same to Pupil Fund Account. Thereafter, immediately four days later, the applicant was served with the termination order.

4. According to the applicant, while terminating the services, the particular incident of the Sports trip and the alleged false manner in which the claims were made by the applicant weighed on the minds of the disciplinary authority and therefore the termination order cannot be termed as a simplicitor termination but as a founded termination as it was based on a

particular incident. Also he was suspended. The applicant has relied on the judgement in the case of Chandra Prakash Shahi V/s. State of U.P. and Ors 2000 SCC (L&S) 613 wherein it was held that termination motivated by employees general unsuitability is valid. If, however, there are allegations of serious misconduct and the preliminary enquiry is conducted behind his back to ascertain the circumstances of a case, it has to be taken as founded on misconduct and therefore to be treated as punitive. The applicant has further referred to the judgement in the case of Dipti Prakash Banerjee V/s. Satvendra Nath Bose National Centre for Basic Sciences & Ors JT 1999(1)SC 396 and Radhey Shyam Gupta V/s. U.P.State Agro Industries Corporation Ltd and Anr 1999 SCC (L&S) 439 in support of his case. Since this is colourable exercise of power, the learned counsel for applicant argues that the termination not being a simplicitor termination should be quashed and set aside.

5. The learned counsel for the respondents however contests the claim and submits that it is a pure simplicitor termination during the extended period of probation on the basis of unsatisfactory performance of the applicant. It has nothing to do with any enquiry. Had the Principal been biased against the applicant, the applicant's probation period would not have been extended beyond the period of two years. The very fact that it was extended shows that the Principal was inclined to give an opportunity to the applicant to improve his performance and it is only on the failure of the applicant to improve his performance that his services were terminated. The learned counsel has also relied on a recent judgement of the Supreme Court in P.N.Verma V/s. Sanjay Gandhi Post Graduate Institute of Medical Sciences & Anr. 2002 SCC (L&S) 170. In this judgement a three factors

test to determine whether the termination is simplicitor or punitive has been discussed. It has been held therein that an order of termination of temporary employee's service based 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 satisfactory is not ex facie stigmatic. Mere holding of a prior enquiry in which the enquiry report contain nothing more against the applicant than his inability to the requirements of the post could not render the said order punitive. It was further held that any statement in any affidavit in defence of the impugned termination order cannot vitiate that order, temporary or adhoc.

5. According to the respondents, therefore they had purely gone by the performance of the applicant during the extended period of probation and terminated the service of the applicant.

6. We have heard both the learned counsel for the applicant as well as respondents, and also have perused the various judgements relied upon by both the sides.

7. A look at the termination order clearly shows that it is a simple order of termination. However, we find that the applicant was suspended during the extended probation period, some sort of enquiry was conducted. A recovery of Rs.1261/- was ordered from the applicant on account of his submitting claims in a false manner. All these go to show that there was a foundation. The enquiry was also conducted behind the back of the applicant. It is also seen that his probation period was extended vide order issued in July, 2000 when already the incident had taken place in September, 99.

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8. In our considered view, therefore, we have to hold that the Termination order is not a simplicitor termination but a punitive termination. Therefore we quash and set aside the impugned termination order and direct the respondents to reinstate the applicant in service with effect from the date of issue of Termination order i.e. from 1/2/2000 with all consequential benefits. OA is allowed. No costs.

*Shanta F*

(SMT. SHANTA SHAstry)  
MEMBER(A)

*ASHOK AGARWAL*  
(ASHOK AGARWAL)  
CHAIRMAN

abp

dt: 18.2.2002.

~~order~~ Judgement despatched  
to Applicant/Respondent(s)  
on 6.3.2002

*Q.P.*  
14/3.

Contempt Petition 19/05

19.4.2005

None for either side.

Order dictated separately  
in open Court dismissing the  
Contempt Petition.

(Muzaffar Husain)  
Malabar (J)

(A.K. Agarwal)  
Vice Chairman.

Part no  
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