

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO.: 234/2000

28-8-2000
Date of Decision :

Ms. Leena Patil Applicant.

Shri G.S.Walia Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri V.S.Masurkar Advocate for the
Respondents.

CORAM :

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

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

- (i) To be referred to the Reporter or not ? ✓
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library

D.S.Baweja
(D.S.Baweja)
Member (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.234/2000

Dated this the 28th day of August 2000.

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

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

Miss Leena Patil,
Stores Keeper,
National Gallery of Modern Art,
Mumbai Branch,
Cawasji Jeghangir Public Hall,
M.G.Road, Mumbai.

... Applicant

By Advocate Shri G.S.Walia

V/S.

1. Union of India through
The Director,
National Gallery of Modern Art,
Jaipur House,
New Delhi.

2. Honorary Director,
National Gallery of Modern Art,
Mumbai Branch, Cawasji Jeghangir
Public Hall, M.G.Road, Mumbai.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

{Per : Shri D.S.Baweja, Member (A)}

The applicant was appointed as a Temporary LDC on adhoc basis in the scale of Rs.950-1500 as per order dated 17.5.1997 for a period of 3 months through Employment Exchange and after

0

..2/-

subjecting to interviews in the National Gallery of Modern Art, Mumbai. The appointment order stipulated that services can be terminated by giving one month's notice by the either side. The applicant joined on duty on 23.5.1997. The appointment was continued for a further period of 3 months as per order dated 14.7.1997 as her work was found satisfactory. Thereafter, she was continued on 3 months period basis till as per order dated 25.8.1998, she was appointed w.e.f. 23.5.1998 until further orders. The applicant further submits that during the appointment, she married on 24.2.1999. At the time of filing the OA. on 3.4.2000, she was pregnant with the due date in April, 2000. The applicant also advised of this to the office on 27.3.2000 with Doctor's certificate. However, to the surprise of the applicant, she received order dated ^{18.2} ~~1.4.~~ 2000 terminating her services w.e.f. 1.4.2000 on the ground that her work is not found satisfactory. Feeling aggrieved by the same, the present OA. has been filed on 3.4.2000.

2. The applicant has challenged the termination of her services on the following grounds :-

(a) The applicant had acquired the status of quasi permanent employee and therefore her services could not be terminated without giving one month's pay in lieu of the notice period.

(b) The applicant at no time was informed that her work was found unsatisfactory. On the other hand, the Honorary Director under whom she was working had found her work satisfactory.

(c) Impugned action is against the principles of natural justice as she has not been afforded any opportunity to represent against the alleged assessment of unsatisfactory work.

(d) The impugned termination order attaches stigma and therefore bad in law and punitive in nature.

3. The respondents have filed the written statement justifying the termination order in accordance with the rules and law. The work of the applicant was not found satisfactory and the applicant had been issued several warnings dated 3.12.1997, 4.6.1999, 23.3.2000, 28.3.2000 in addition to several oral warnings to improve her performance. On 12.11.1997, the Honorary Director had informed New Delhi office that the work of the applicant is not satisfactory and she is not fit to be continued in service. The termination of services has been accordingly done as per the terms of appointment. As regards one month's pay in lieu of notice period, the applicant was paid the same as per the Telegraphic Money order dated 29.4.2000. The applicant was a temporary employee governed by CCS (Temporary Service) Rules and not entitled of protection of Article 311 of the Constitution of India. Therefore, the applicant's contention that the termination order is punitive in nature is not sustainable. The respondents also contest that the applicant had been given quasi permanent status. With these averments, the respondents plead that the OA. has no merit and deserves to be dismissed.

(L)

. .4/-

4. The applicant has controverted the stand of the respondents by filing rejoinder reply. The applicant reiterates that the termination of services for unsatisfactory performance is stigmatic and therefore inquiry as contemplated under Article 311 of the Constitution ought to have been held.

5. We have heard the arguments of Shri G.S.Walia and Shri V.S.Masurkar, learned counsel for the applicant and respondents respectively.

6. The applicant and the respondents have placed reliance on the following judgements/order in support of their respective stand.

Applicant

(a) V.P.Ahuja vs. State of Punjab & ors.

2000 (1) SC SLJ 272.

(b) Dipti Prakash Banerjee vs. Satyendra Bose

National Centre for Basic Sciences, Calcutta
& ors. - 1999 SCC (L&S) 596.

(c) M.M.Yaragatti vs. Vasant & Ors.

AIR 1987 Karnataka 186.

(d) Gujrat Housing Board vs. Nagaji Bhai

Laxman Bhai & ors.

AIR 1986 Gujarat 81.

(V)

Respondents

(a) State of U.P. & Anr. vs. Ram Krishna & Anr.
(1999) 3 SCC 350.

(b) Rajasthan Adult Education Association & Anr.
vs. Ashoka Bhattacharya (Km.) & Anr.
1998 SCC (L&S) 1114.

(c) Union of India vs. Shri Bihari Lal Sidhana
1997 (2) SC SLJ 25.

(d) Superintendent of Post Offices vs.
E. Kunhiraman Nair Mudliyar,
1997 (2) SC SLJ 956.

(e) Ganganagar Zila Dugdh Utpadak & Sahkari
Sangh Ltd. & Anr. vs. Priyanka Joshi & Anr.
1999 (2) SC SLJ 245.

(f) State of U.P. vs. Rajendra Kumar,
1998 SCC (L&S) 1536.

7. The services of the applicant have been terminated as per
the impugned order dated 14.2.2000 on the ground that services of
the applicant who is a temporary employee have not been found
satisfactory and mentioned so in the order. Therefore, before



..6/-

going into the other grounds (a) i.e. the order is stigmatic in nature, (b) termination is by way of punishment and cannot be imposed without subjecting her to disciplinary proceedings, the basic issue to be deliberated upon is whether the decision of the competent authority that the performance of the applicant was unsatisfactory is supported by the material on the record or this reason has been taken as a cover to terminate the services? Other issues and the cited judgements by the either side will have to be gone into only thereafter if required.

8. From the facts stated earlier, it is noted that the applicant was appointed as per order dated 17.5.1997 for a period of 3 months on adhoc basis against a temporary post. The terms and conditions of the appointment have been detailed in the appointment order. Thereafter, the period of 3 months each has been extended from time to time till the issue of the order dated 25.8.1998, as per which she is appointed from 23.5.1998 until further orders on purely temporary capacity on adhoc basis. The services of the applicant have been terminated from 1.4.2000 as per order dated 14.2.2000. For supporting the decision, the respondents have relied upon the documents brought on the record at Annexures - 'R-6' to 'R-10'. The applicant denies of having received any of these letters except letter dated 12.11.1997 at 'R-10'. The counsel for the respondents fairly conceded that there is no acknowledgement of the letters on record as demanded to be produced by the applicant through Misc. Application No. 575/2000, but contended that applicant was aware of these letters.

(V)

..7/-

The counsel for the respondents also added that UDC is related to the applicant and he failed to obtain the acknowledgement even after service of the letters. The counsel for the respondents further averred that the applicant had been also given oral warnings. Without going into the controversy about the service of the warning letters on the applicant at this stage, we will examine whether these letters even if received by the applicant can justify the decision that the work was unsatisfactory and opportunity had been given to improve her work.

9. The first letter is dated 12.11.1997 (R-10) which is written by the Honorary Director, Mumbai to the Director of National Gallery of Modern Art, New Delhi. This letter has been written after about 6 months of joining of service on 23.5.1997 and when the second extention of 3 months period was coming to end. It is noted that while recommending the second extension of appointment from 22.8.1997, the same Honorary Director had certified that the work was satisfactory (A-5). This resulted in the issue of order dated 19.9.1997 (A-6). In the letter dated 12.11.1997, the Honorary Director had recommended that the services of the applicant be terminated after probation is over on 22.11.1997 in view of unsatisfactory performance. Inspite of this letter, it is admitted fact that the applicant was continued thereafter by giving two more extensions of 3 months each upto 22.5.1998. From 22.5.1998, the appointment has been extended till further orders as per the order dated 25.8.1998 and continued till termination from 1.4.2000. If the Honorary

(V)

..8/-

Director under whom the applicant was working had recommended termination of services, then how her services were extended thereafter for two periods of 3 months each and then extended till further orders. The respondents have not even whispered as to how order dated 25.8.1998 could be issued in the face of the letter dated 12.11.1997. In the absence of any explanation, the issue of order dated 25.8.1998 leads to no other inference except that the work of the applicant was found satisfactory. Therefore the letter dated 12.11.1997 cannot be relied upon to conclude that the work of the applicant was unsatisfactory. In fact this letter does not even disclose whether any warning letters were issued to the applicant to improve her performance before the Honorary Director came to his conclusion.

In view of the above observations, the letter dated 3.12.
^{also}
1997 at 'R-8' ^{also} cannot be relied upon. If the Delhi office had feed back of unsatisfactory performance of the applicant as reflected in the letter dated 3.12.1997, then how the same officer after writing letter on 3.12.1997 could sign letter dated 4.12.1997 at 'R-1' extending her appointment for three months. This extension does not warn the applicant about his unsatisfactory work. Is this not blowing hot & cold by the Respondent No. 1? Not only this, after granting two extension of 3 months each, he extended services till further orders.



..9/-

Letter at 'R-6' dated 4.6.1999 refers to only submission of leave application for the leave availed by the applicant and does not mention that her work is not satisfactory. There is no warning in this letter that if she does not improve, her services are likely to be terminated as per the terms and conditions of appointment.

Next letter is dated 28.3.2000. The impugned order of termination at 'A-1' is dated 18.2.2000. This means that the decision had been taken to terminate services on this date. Then can the letter dated 28.3.2000 be relied upon? Decision on 18.2.2000 was expected to be taken by the competent authority based on the material available with him till that date. Any letter issued subsequently cannot be cited to justify the termination of the services on the ground of unsatisfactory service. Apart from this infirmity, on perusal of letter dated 28.3.2000, we do not find it reflecting as unsatisfactory service. The matter in this letter refers to absence and granting of leave. The letter indicates that the action of the applicant was disobedience and therefore a misconduct which is required to be dealt with by taking disciplinary action and not resorting to short cut of terminating of services.

The letter dated 23.3.2000 has been also issued after the decision to terminate services had been taken on 18.2.2000 and the observations made above in case of letter dated 28.3.2000 apply to this letter also.

10. From the above analysis of the documentary evidence brought on the record to support the conclusion of competent authority to terminate the services of the applicant for unsatisfactory performance, it will be seen that there was nothing before the competent authority except two letters dated 12.11.1997 (R-10) and 3.12.1997 (R-8) which are more than 2-1/2 years old. We have already observed that once further extensions were given and applicant continued thereafter, these letters cannot form the cogent foundation to declare that the applicant was not having satisfactory service. Not only this, at no stage the applicant has been made aware of her unsatisfactory performance and warned her that if her work does not improve, then her services will be terminated. It is contended that several oral warnings were issued to the applicant. This is difficult to accept in view of the earlier deliberation. If this statement is accepted, then if the oral warnings did not bring out any improvement, written warnings should have been issued. Thus, it is clear that at no stage any opportunity was given to show cause against unsatisfactory performance or to give her chance to improve her performance.

11. It is within the domain of the competent authority to form an opinion about satisfactory performance of a temporary employee. It is not the scope of judicial view to look at such a decision as ^{an} appellate authority. However, if the termination order on the basis of unsatisfactory performance is challenged,

(a)

it is imperative to look at whether the decision of the concerned authority is supported by adequate material before him. In the present case as discussed earlier, we do not find from the record produced before us that competent authority had any material before him. In the result, we are compelled to take a view that conclusion of the competent authority that the performance of the applicant was not satisfactory is not based on any material and such a conclusion was therefore arbitrary and cannot be held to be legally sustainable. Termination of services on such a conclusion consequently is bad and cannot be upheld. Termination order deserves to be quashed.

12. Both the counsel vehemently advanced arguments by citing the Hon'ble Supreme Court's judgements as detailed in para 6 on the contentions of the applicant that the termination order is stigmatic and by way of punishment imposed without holding any inquiry. Once we held above that the conclusion of the competent authority that the work of the applicant was not satisfactory is arbitrary and not supported by any material on the record, we are of the opinion that these issues need not be gone into on merits.

13. In the result of the above, the OA. is allowed. The impugned order dated 18.2.2000 is set aside. The applicant will be reinstated in service with full back wages till the date of reinstatement. The compliance will be done within a period of 15 days from the date of receipt of the order. No order as to costs.

S.L.JAIN
(S.L.JAIN)

MEMBER (J)

D.S.BAWEJA
(D.S.BAWEJA)

MEMBER (A)

mrj.

M.P./No: 686/2000
for extension of time
fixed on 22.9.2000

22/9/2000

Per Tribunal

Date: 22/9/2000

14/9

Applicant in person by B.N. Bahadur
Advocate / Respondent by

Counsel. None are

The matter adjourned to 25/9/2000
for oral

Dy. Registrar

Dated: 25-9-2000 (4)
Shri G.S. Walia, Counsel for the applicant
Shri V.S. Masurkar Counsel for the respondents

Applicant's reply on m.p. 686/2000 is taken
on record. Copy of the reply served on the
other side.

Adjourned to 27-9-2000.

SL Jain
(S.L. Jain)
M/S

B.N. Bahadur
(B.N. Bahadur)
M/A

Tribunal's Order

Dated : 27.9.2000

Applicant by Shri G.S.Walia, Advocate. Respondents by
Shri V.S.Masurkar, Advocate.

2. On 28.8.2000 OA.NO.234/2000 was decided and it is ordered that "the applicant will be reinstated in service with full back wages till the date of reinstatement. The compliance will be done within a period of 15 days from the date of receipt of the order."

3. The respondents have filed M.P.No.686/2000 seeking the relief that time be extended to implement the judgement by three months. The learned counsel for the applicant opposes the petition on the ground that it is not signed by the competent authority who is required to implement the order. It is true that the written statement is signed by Ms.Mukta Nidhi Samnotra who has her office at New Delhi and the present petition is signed by the Hon. Director who is not a Government official. We may not lost sight of the fact that the respondents have ^{also} ~~last~~ filed the order of the Government of India, Deptt. of Culture dated 6.9.2000 addressed to Smt. Mukta Nidhi Samnotra by which direction is given that NGMA may proceed for stay of the order of CAT or extension of time for filing an appeal. On the same

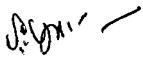
S.L.D.M.

order, Smt. Mukta Nidhi Samnotra has ordered Dr. Yoshi who has signed the present application to take action as advised by the Department of Culture. In such circumstances, though he may be Hon. Director, but the authority is delegated. Hence, we do not find fault with the application particularly when the applicant in the present case is Group 'C' employee.

4. The learned counsel of the applicant also opposes the application that the respondents cannot be heard unless they file ~~a~~ ^{purge the} contempt. The respondents have filed this application well in time. Hence, till the time of filing the application, the respondents have not committed any contempt. ~~Before going~~ ^{looking} to the facts and the Government machinery, the way, it functions we do not think it proper to deny the relief as prayed for but reasonable time deserves to be provided and in our considered opinion till 17.10.2000 the time is extended for implementation of the judgement. It is clarified that in case the order of this Tribunal as it stands today continues and if not being stayed by the Hon'ble High Court or the Apex Court, the applicant shall be entitled to the salary from the date from which implementation of the order is ordered.


(SHANTA SHASTRY)

MEMBER (A)


(S.L.JAIN)

MEMBER (J)

mrj.