BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 12th NOVEMBER 1986

present : Hon'ble Shri Ch. Ramakrishna Rao - Member (J)

Hon'ble Shri L.H.A. Rego - Member (A)

APPLICATION No. 1052 of 1986

K.M.N. Nair
4, Residency Road, Bangalore - Applicant

(Shri M.Balachandran)

v

1. Union of India represented by
Secretary to the Department of
Atomic Energy, Government of India,
New Delhi 110 011

2. The Senior Administrative & Accounts Officer,
Department of Atomic Energy,
Atomic Mineral Department,
Begumpet, Hyderabad - Respondents

(Shri M.S.Padmarajaiah, Senior C.G.S.C.)

This application came up for hearing before this Tribunal and the Hon'ble Member (J) Shri Ch. Ramakrishna Rao, to-day made the following

ORDER

..... This is

This is an application initially filed in the High Court of Karnataka as a writ petition and subsequently transferred to this Tribunal. The facts of the case giving rise to this application, briefly, are as follows.

2. The applicant on retirement from the Indian Army, was appointed as an Upper Division Clerk ('UDC') in the Atomic Minerals Division of the Department of Atomic Energy. ~~On this appointment~~ The applicant joined duty in the office of the Atomic Minerals Division, Eastern Circle, Calcutta on 18.8.1969. In 1975, he was transferred to the office of the Atomic Minerals Division, Southern Division, Bangalore. On 11.4.1980 an order was passed ~~by~~ (Annexure S) by the second respondent ('R2') under sub rule (1) of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 terminating forthwith the services of the applicant as a temporary UDC. This order is challenged by the applicant in this application.

3. Shri M. Balachandran, learned counsel for the applicant submits that the following adverse remarks were made in the confidential report of his client for the period 1.1.1976 to 31.12.1976 :

"Amenity to discipline : Fair, argumentative.
Punctuality : Fair"

were communicated to him; that he requested R 2 to

on him in violation of the requirements of Article 311(2). In STATE OF MAHARASHTRA v. SABOJI and another AIR 1980 SC p.42, PATHAK J has observed :

> "....if the Government servant isa able to establish by material on the record that the order is in fact passed by way of punishment, the innocence of the language in which the order is framed will not protect it if the procedural safeguards contemplated by Article 311(2) of the Constitution have not been satisfied." ..... "On a sufficient case being made out on the merits before the Court by the Government servant it is open to the Court to resort to scrutiny of the official records for the purpos of verifying the truth. The Court should not decline to peruse the official records in an appropriate case and where considerations of privilege and confidentiality do not suffer, the information set forth in the records should be made available to the Government servant. The mere possibility that the official records could confirm what the Government servant had set out to prove and prima facie had, indeed, proved should not shout out disclosure of the information."

This leads us to a consideration of the question whether the order terminating the services of the applicant is an innocuous one and casts any stigma on his character. We cannot help taking note of the fact that after the applicant completed the probationary period, his name was considered only once in 1975, during a period of eight years, for being made quasi-permanent though his name could have been considered on two or three occasions. In other words, the retention of the applicant in the service for over a decade is a strong circumstance which negatives the unsuitability of the applicant for the post of UDC. There is yet another circumstance which we should take note of. The representation made by the applicant to the authorities for deleting

expunge the uncomplimentary remarks made in the confidential report, at an early date; that the fixing of time-limit by his client was not relished by R 2; that in reply to a reminder thereafter his client was told that the matter was still under consideration; that without expunging the remarks his client ultimately received the impugned order dated 11.4.1980 terminating his services; that from a note of R 2 kept in the confidential deport dossier it appears that the several adverse factors of which his client was not given any notice weighed with the R2 in passing the impugned order which is ~~illegal and~~ unsustainable in law.

4. Shri M.S.Padmarajaiah, learned counsel for the respondents submits that the applicant was only a temporary employee and after completing completing his probation, he was not declared as quasi-permanent; that once he was considered for being made quasi-permanent in 1975 but was not found suitable; that the order terminating the service of the applicant is an innocuous order it does not cast any stigma on him and it is, therefore, legal and valid in law.

5. We have considered the matter carefully. It is now a settled law that"even in the case of a temporary or officiating Government servant his services cannot be terminated by way of punishment casting a stigma

... on him

the adverse remarks from the confidential report relating to the year 1976 was pending when his name was considered for quasi-permanency and it is not unlikely that he was not declared quasi-permanent because of the adverse remarks. In other words, we are not sure of the objective assessment made by the departmental promotion committee when he was considered for declaration of quasi permanancy in 1976.

6. In the present case the applicant preferred an appeal against the adverse remarks in the confidential report relating to the period 1976 and the same was kept pending too long without passing any order thereon. Since on the date of the impugned order of termination from service, the aforesaid appeal was pending, it is reasonable to infer that the adverse remarks operated on the mind of the appointing authority(R2) in issuing the impugned order. Above all, from a noting of R2 kept in the CR dossier of the applicant, it appears that the applicant's absence due to short and long spells of leave six to twelve times from 1973 to 1979 was adversely noticed by R2. In the aforesaid noting it is also stated that the applicant was in the habit of proceeding on leave without prior permission, which was resulting in dislocation of work; that his erratic attendance was creating more work in the section; and he was reprimanded without any change in his habits for the good. The contents of this note leave no doubt in our mind that the appointing authority (R2) should have given an opportunity to the applicant to

...vindicate

should have
xxx xxxxxxxxx xx vindicate his conduct and/ also furnished fuller details of the periods of absence and the so-called erratic attendance. After all the leave was being sanctioning only by the competent authority and after sanctioning the leave it is not open to the authority to take exception to the absence of the applicant/ that too after a lapse of a long time. x If the competent authority felt that leave should not be sanctioned in public interest, it was open to him to do so and if he still absented it would be a totally different case in which the conduct of the applicant would bear criticism. It is not known what R 2 means by saying "no useful purpose will be served by retaining him (the applicant) in service". The fact remains that the applicant served for a decade as UDC and xx xxxxx xxxxxxxxxx xxxx during this period his services were not found unsatisfactory except that in 1976 the adverse remarks in the confidential report were communicated to him, against which he preferred an appeal which was pending at the time of the termination of his services.

7. Taking into account all the facts and xxxx circumstances, the feeling is inescapable that the impugned order is not so innocuous as it appears to be since in effect, the order has been passed casting aspersions on the character of the applicant.

Applying the dicta in the Supreme Court decision cited supra, we have no hesitation in holding that such an order could have been passed only after complying with the provisions of Article 311(2) of the Constitution. We, therefore, quash the impugned orders (Annexures 'S' and 'V').

8. In the result the application is allowed as indicated above. No order as to costs.

Member (J)

Member (A)