

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS 5TH DECEMBER 1986

Present

THE HON'BLE JUSTICE SHRI K.S. PUTTASWAMY : VICE-CHAIRMAN

THE HON'BLE SHRI L.H.A. REGO : MEMBER (AM)

Application No. 787/1986

W.P. No. 18226/1981

Shri Kaleemulla Khan,
No. 9 Ishaq Saheb Street,
Munireddypalaya P.O.,
Bangalore-6.

.... Applicant

(Shri M.S. Anandaramu, Advocate)

1. The Union of India represented by the Secretary to the Government, Ministry of Health and Family Welfare, Nirman Bhavan, New Delhi.
2. The Director General of Health Services, Nirman Bhavan, New Delhi.
3. The Director in-charge of National Tuberculosis Institute, No. 8, Bellary Road, Bangalore-3.
4. The Administrative Officer, National Tuberculosis Institute, No. 8 Bellary Road, Bangalore-3. Respondents.

(Shri M.S. Padmarajaiah, Advocate)

This application has come up for hearing before this Tribunal on 21.11.1986, the Hon'ble Shri L.H.A. Rego, Member (AM) made the following:

O R D E R

This is a writ petition filed under Article 226 of the Constitution of India in the High Court of Judicature, Karnataka which has been transferred to this Bench under Section 29 of the Administrative Tribunals Act, 1985 (the Act) and renumbered as an application. The applicant has inter alia prayed that the order dated 12.1.1981 (Annexure W) of the third respondent terminating his services and the order dated

31.7.1981 (Annexure Y) of the second respondent rejecting his appeal be quashed, being illegal and that he be reinstated to his original post with consequential benefits.

2. The applicant, who had studied upto SSLC was a handicapped person as he had lost his left hand in an accident, before securing appointment in the National Tuberculosis Institute, Bangalore (NTI for short) with effect from 1st April, 1977 as a Peon, in a temporary capacity. According to the terms of his appointment, he could be terminated any time by a month's notice by the appointing authority, without assigning any reasons. Besides, he was to be on probation for a period of two years, on satisfactory completion of which, he was to be confirmed in that post, as and when the post was made permanent.

3. According to the applicant, during the tenure of Dr. M.K. Menon, as permanent Director NTI upto December 1977, there was no complaint against him. But when Shri Banerjee was placed in charge as Director NTI thereafter, the applicant was in difficulty, as the former bore animus against him and used to ill-treat him for refusing to carry out his personal work.

4. The applicant was governed by the provisions of the Central Civil Services (Temporary Service) Rules, 1965 (Rules). The case of the applicant is, that he should have been made quasi-permanent under these Rules, after the stipulated period. If he was found unsuitable, he should have been communicated the reasons, but this was not done.

5. The applicant is said to have been served with a memo dated 17.4.1980 by the Regional Tuberculosis Officer (RTO)

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for being absent during working hours at the NTI on 16.4.1980 for which his explanation was called. The applicant gave his explanation for the same, which was not considered satisfactory by the fourth respondent and he was cautioned on 23.6.1980 to be more careful in future (Annexure J).

6. On 31.5.1980 an office order was issued to him (Annexure F) by the fourth respondent directing him to attend office at 9.00AM and to keep all the rooms in the upstairs clean and tidy by 9.30AM. He was posted for this duty for one month with effect from 2.6.1980 and was permitted to leave office at 4.00PM during this period. The applicant is said to have represented on 6.6.1980 and again on 10.6.1980 to provide him the assistance of one more person to help carry out this work in time.

7. In the memo issued to the applicant on 26.6.1980 (Annexure K) it was clarified by the fourth respondent that in view of his physical handicap he need clean up as orally informed, only the office tables in the first floor and keep a glass of water in the Director's room and that the other Group D officials would attend to work such as fetching water etc. The statement of the applicant that he had to clean 19 rooms in the first floor was refuted and he was informed that safaiwalas and others were also assigned the work of cleaning the rooms.

8. On 5.7.1980 another memo was issued to the applicant (Annexure L) by the fourth respondent, bringing to his notice unsatisfactory performance in his work and he was cautioned to pay due care and attention to his work. On 20.9.1980 again, another memo was issued (Annexure M) by the fourth respondent to the applicant among two others, to explain his absence from duty during certain hours on 16.9.1980. The applicant

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submitted his explanation on 25.9.1980 (Annexure N), stating that he was present at his place of duty and that he was being harassed by a spate of memos since May 1980 with some ulterior motive. The applicant alleges that he was being harassed for being an active member of the NTI Non-Gazetted Employees Association.

9. The applicant was served a memo by the fourth respondent on 13.11.1980 (Annexure O) wherein he was informed that his explanation was unsatisfactory and he was warned that recurrence of such unauthorised absence from duty would be severely dealt with.

10. By his memo dated 15.11.1980 (Annexure P), the applicant was informed by the fourth respondent that his case for quasi-permanency was examined by the DPC and it was decided that his case be considered in 1981. He was advised to improve his work and performance in the meanwhile.

11. The applicant was warned by the fourth respondent on 24.11.1980 (Annexure Q) for not complying with the directions of the third respondent and was given to understand that recurrence would be sternly dealt with. The applicant submitted his representation thereon on 27.11.1980 (Annexure R) to the third respondent.

12. Another memo was issued on 2.10.1980 (Annexure S) by the third respondent calling the explanation of the applicant for not only not delivering some official papers to various officers as instructed but ~~is~~ what is worse ^{as} for throwing away these papers. The applicant submitted his explanation thereto on 8.12.1980 (Annexure T).

13. A further memo was issued by the third respondent on 11.12.1980 (Annexure U) to the applicant, for his unduly

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long absence from duty, for which he was severely warned and advised to guard against recurrence. The applicant represented thereon on 19.12.1980 (Annexure V).

14. On 12.1.1981 (Annexure W) Dr. Banerjee, the Director in-charge of NTI, issued an order under Rule 5 of the Rules terminating the services of the applicant forthwith, informing him that he would be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service. The applicant alleges that this order ^{is} clearly illegal, unjust and unsustainable. He further alleges that the third and the fourth respondents were in collusion to harass and victimise him, by issuing to him a series of memos on certain lapses which were denied by him. According to him, they condemned him without holding an enquiry and without affording him a reasonable opportunity of a personal hearing, as he did not support the Association backed by these two respondents and so, they were bent on getting rid of him.

15. According to the applicant, the order of termination was punitive in nature and the authority who terminated his services was not competent to do so, since he was only in-charge Director of NTI and therefore, this order of termination was illegal.

16. Aggrieved by the order of termination, the applicant preferred an appeal to the second respondent on 10.2.1981 (Annexure X) who rejected the same on 31.7.1981 (Annexure Y). Thereafter, he filed a writ petition in the High Court of Karnataka, which is now the subject matter of the application before us.

17. Shri M.S. Ananda Ramu, learned counsel for the applicant while reiterating the grounds advanced in the

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application lay emphasis on the following:

- (i) The applicant had completed his probationary period of two years satisfactorily and had a good service record.
- (ii) The order dated 12.1.1981 (Annexure W) relating to termination of the services of the applicant by the third respondent was punitive in nature and attached a stigma to the applicant as it was not an innocuous order of termination simpliciter. Consequently, this was violative of Article 309 of the Constitution of India, particularly, when no proper enquiry was held and the applicant was not given due opportunity of a personal hearing.
- (iii) Dr. Banerjee being only an in-charge Director of NII and not a regular Director, was not competent to terminate the services of the applicant and bore malice against the applicant.
- (iv) The applicant deserved special sympathy as a handicapped person but glaringly this was not shown.

18. The learned counsel for the respondents placed before us the Personal File and the Confidential Service Record of the applicant, to show that his performance was not satisfactory and that he had to be cautioned time and again for disobedience of orders and negligence of duty.

19. We have carefully perused the same and are convinced that the performance of the applicant was not only unsatisfactory but his service record too, was clearly adverse throughout, for the period from 1.4.1977 to 31.3.1980 and thereafter.

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20. The counsel for the applicant contended that his client had satisfactorily completed his probationary period of two years as Peon on 1.4.1979 and therefore was not liable to be terminated from service. It is pertinent to abstract here the relevant portion of the terms of appointment offered to the applicant on 26.3.1977 (Annexure A), which are as follows:

"(b) The period of probation will be two years; after the satisfactory completion of the probationary period he will be continued in the post and be confirmed as and when the post is made permanent."

21. We have observed earlier that the service record of the applicant was clearly adverse throughout. The mere fact that the applicant crossed the period of probation, does not automatically entitle him to confirmation in service, even if no order was passed in that behalf, as has been observed by the learned Judge in **KADAR NATH BAHL V. THE STATE OF PUNJAB AND OTHERS (AIR 1972 SC 873)** as under:

"The law on the point is now well settled. Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf.

Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer."

22. The above view of law was confirmed by the Constitution Bench of the Supreme Court in **STATE OF PUNJAB V. DHARAM SINGH (1968 3 SCR 1)**.

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23. In view of the above rulings of the Supreme Court and the positively adverse service record of the applicant, the stand of the counsel for the applicant that his client could not be terminated from service as he had completed his probationary period is not tenable.

24. The next contention of the counsel for the applicant was that the order of termination of the services of his client was not an innocuous one and simpliciter in character, as it was punitive in nature and attached a stigma to him. The pertinent order reads as under:

" NATIONAL TUBERCULOSIS INSTITUTE
NO.8 BELLARY ROAD, BANGALORE-3

No.F.100-P/342/77/Estt. Dated 12th January 1981

Office Order

In pursuance of the Proviso to Sub-Rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules 1965, I Dr. A. Banerji, Director i/c National Tuberculosis Institute, Bangalore, hereby terminate forthwith the services of Shri Kaleemulla Khan, Group D Official, and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing them immediately before the termination of his service.

Sd/-9-1-81
A. Banerji,
Director Incharge."

25. In this respect the counsel relied on the decision in JAGDISH MITTER V. THE UNION OF INDIA (AIR 1964 SC 449) to buttress his argument. In our view this decision is distinguishable from the present case and is of little avail to the applicant, as in the former case the temporary Government servant was discharged on the ground that he was found undesirable to be retained in Government service and the Supreme Court held that compliance with Article 311(2) was necessary before

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the order of dismissal was issued, as a stigma attached to the Government servant dismissed. In the present case, the termination order reproduced in para 23 supra reveals, that it was a simple order of discharge without casting any aspersion against the applicant or attaching any stigma to his character. The applicant was appointed on a temporary basis and the termination of his services, therefore, was permissible under the appointment order and the rules.

26. The counsel next sought to draw sustenance from the Supreme Court ruling in ANOOP JAISMAL V. GOVERNMENT OF INDIA AND ANOTHER (1984 SCC (L&S) 256) wherein the learned Judges held, that the simple order of discharge of a probationer on ground of unsuitability passed before completion of his probation period, was actually based on the report of the concerned authority, referring to alleged misconduct by the probationer and therefore the order was punitive in nature, which in the absence of a proper enquiry was violative of Article 311(2) of the Constitution and was therefore set aside. The case before us is not alike on all fours, as the applicant was not terminated before expiry of his probationary period and further the ground of unsuitability was not specifically mentioned in the order of termination. We, therefore, hold that the ruling of the Supreme Court referred to above has no bearing on the case before us.

27. The other ground on which, the counsel for the applicant assailed the order of termination of the services of his client, was that Dr. Banerjee being only an in-charge and not a regular Director of the NTI, did not have the competence to pass the order of termination of service of the applicant as he was not vested with the requisite statutory power under Rule 5 of the Rules. The said order according to him was therefore illegal and unsustainable. Rebutting

this contention the counsel for the respondents showed us the original letter No. Z.28013/19/80-TB dated 8.9.1980 issued by the Director General of Health Services, Government of India, New Delhi, wherein he had declared Dr. Banerjee, Director in-charge NTI as the Head of Office, by virtue of which he was competent to issue the impugned order. On perusing this letter, we are satisfied that Dr. Banerjee was not merely holding current charge of the post of Director NTI but was vested with full powers of a regular Director, having been declared as the Head of Office and was therefore competent to pass the impugned order.

28. The counsel for the applicant next placed reliance on the decision in OM PRAKASH GUPTA SWADHEEN V. UNION OF INDIA AND OTHERS (1976 SCC (L&S) 110) to reinforce his contention, that Dr. Banerjee was not the "appointing authority", in the case of the applicant and therefore had no competence to terminate his services. We are unable to appreciate this contention, as aforementioned, Dr. Banerjee was declared as "Head of Office", by the competent authority under the General Financial Rules as stated earlier and was thus clothed with requisite powers as "appointing authority", in his capacity as Director in-charge of NTI, in which he was not inferior in this respect to the regular Director NTI. The above Supreme Court decision relied on by the counsel for the applicant does not therefore bear on the point raised by him.

29. The counsel for the applicant alleged that until Dr. Banerjee came on the scene as the Director in-charge of NTI his client did not have any difficulty in the discharge of his duties. According to him, Dr. Banerjee bore malice against the applicant as he did not oblige him in doing his personal work and was thus bent on victimising him. There is no

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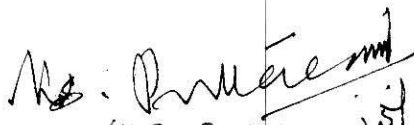
evidence whatsoever adduced before us, to substantiate this allegation. We have carefully gone through the record placed before us by the respondents in regard to the memos issued to him from time to time to the applicant, bringing instances of negligence in duty and disobedience of orders to his notice with caution to guard against recurrence. All these memos are seen to have been issued to the applicant by the Administrative Officer of NTI and not by Dr. Banerjee in his capacity as Director in-charge of NTI. There is no other evidence forthcoming to show that Dr. Banerjee was inimical and vengeful in his attitudes towards the applicant as alleged. The allegation by the counsel for the applicant that the services of his client were terminated by Dr. Banerjee as Director in-charge of NTI, on account of mala fides and/or on collateral grounds is thus not proved but on the contrary, is frivolous.

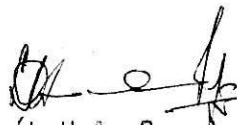
30. The counsel for the applicant next contended that the NTI was an industry, according to the Industrial Disputes Act (XIV of 1947) and therefore according to him, ~~(therefore)~~ his client comes within the purview of this Act, in regard to termination, payment of compensation etc. the mandatory provisions of which, were not complied with in this case. In our view, the counsel has far too belatedly advanced this contention, which was not urged in the original writ petition filed by the applicant before the High Court of Judicature, Karnataka. This apart, there is no merit whatever in this contention as the NTI is a regular Department of the Government of India and by no means can be regarded as an industry, as to fall within the purview of the Industrial Disputes Act, 1947. We, therefore, reject this contention, as ill-founded.

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31. We find that Dr. Banerjee, Director in-charge of NTI terminated the services of the applicant by an order simpliciter, which attaches no stigma to the applicant and did not result in any civil consequences to him. This termination was in terms of the appointment order under the Rules. It is therefore not for us to delve deep into the records and unravel the reasons as ruled by the Supreme Court in STATE OF MAHARASHTRA V. VEERPANI SABOJI AND OTHERS 1980 SCC (L&S) 1961.

32. In the result, the application fails and we dismiss the same accordingly with no order as to costs.


(K.S. Puttaswamy)
Vice-Chairman
5.12.1986


(L.H.A. Rego)
Member (AM)
5.12.1986

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