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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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~~XXXXXXXXXX~~ BOMBAY BENCH

O.A. No. 68/92

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~~XXXXXXXXXX~~

DATE OF DECISION 30.3.1992

K J Sayar

Petitioner

Mr. G S Walia

Advocate for the Petitioner(s)

Versus

Union of India & Another

Respondent

Mr. R K Shetty

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U C Srivastava, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *y*
2. To be referred to the Reporter or not? *y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *y*
4. Whether it needs to be circulated to other Benches of the Tribunal? *y*

MGIPRRND-12 CAT/86-3-12-86-15,000

[Signature]
V.C.

(4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESOT ROAD, BOMBAY-1

OA NO. 68/92

Kirtikumar Jasvantrai Sayar

Ex- Scientific Assistant (B) BARC
C/o. G S Walia
Advocate; High Court
Office No.16 Maharashtra Bhavan,
Bora Masjid Street;
Behind Handloom House
Fort BOMBAY 1

..Applicant

V/s.

1. Union of India
through Head, Personnel Division
Bhabha Atomic Research Centre
Personnel Division
Central Complex; Trombay
Bombay 400085

2. Deputy Establishment Officer
Bhabha Atomic Research Centre
Personnel Division;
Central Complex; Trombay;
Bombay 400085

..Respondents

Coram: Hon. Shri Justice U C Srivastava, V.C.
Hon. Shri M Y Priolkar, Member, (A)

APPEARANCE:

Mr. G S Walia, Advocate
for the applicant

Mr. R K Shetty, Counsel
for the respondents

ORAL JUDGMENT:

DATED: 30.3.1992

(PER: U C Srivastava, Vice Chairman)

The applicant was appointed as Scientific Assistant by respondents in 1988 which appointment was subject to automatic termination in connection with the Plutonium Recycling Project work vide appointment order dated 19.5.1988. The appointment was extended upto 31.12.1989 which was also subject to automatic termination. Vide letter dated 4.1.1990 the appointment was further extended upto 31.12.1990, subject again for automatic termination. All these appointments including the initial appointment were liable to be terminated after giving one month's notice.

The applicant vide order dated 11.10.91 was transferred to Madras from Bombay, which transfer has been termed by the applicant as a transfer without justification with the use of administrative phrase in public interest. The applicant has earlier availed the Commuted leave and Earned Leave on eleven occasions. From 11.10.91 to 12.10.91 the applicant applied for 2 days commuted leave followed by three days Earned leave from 13.10.91 to 15.10.91. He again applied for earned leave from 22.10.91 to 8.12.91 and for ten days Extra Ordinary leave from 9.12.91 to 18.12.91.

According to the respondents, the applicant was absenting himself from the place of work since 21.10.91 without even intimating his immediate superior. Vide his letter dated 25.10.91 he requested for grant of leave for 3 weeks on medical ground from 22.10.91 enclosing a medical certificate which was granted. On expiry of leave the Assistant Personnel Officer vide his memorandum dated 12.11.91 asked the applicant to report for duty immediately. But instead of reporting for duty the applicant asked for further leave for one and half month without attaching proper Medical Certificate. The certificate did not bear any date of issue. The original Doctor's certificate submitted by him on joining duty on 19.12.91 bears date of issue as 15.11.91 that creates doubt about the genuineness of the certificate. The respondents state that the project work at Kalpakkam, Madras, gravely suffered and that is why they have decided to terminate the services of the applicant.

On behalf of applicant it was contended that the applicant's services were terminated because he was on leave meaning thereby that he was punished by the respondents without holding an inquiry and

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without giving any opportunity of hearing. In this connection the learned counsel for the applicant made reference to the case of UNION OF INDIA V. M A CHOWDHARY AIR 1987 SC 1526, which was the case of temporary employees on contract basis, wherein it was held that the ^{artist} staff of All India Radio hold civil posts and are entitled for protection under Article 311 of the Constitution of India. It was observed that the authority to terminate the service on 6 months notice emanated from the contract but nonetheless it has the effect of violating Art. 311(1) of the Constitution of India. It must comply with Art. 311(2) of the Constitution. However, in the present application the Art. 311 of the Constitution of India are not applicable. The applicant in the present case was appointed for few months and his appointment was extended from time to time. Because of the continuous ailment and absence of the applicant the respondent's work suffered and that is why it was viewed that the applicant's services are not suitable for the job and that is why his services were terminated. In this connection the case of Municipal Corporation of Raipur V. Ashok Kumar Misra, ^{S.C.} ATR 1991, /424. In that case the termination was made after initial period of probation. It was held that where rules empower the authority to extend probation beyond the prescribed period, continuance in service even after the initial period of probation, in absence of any express order of confirmation, would amount to extension of probation period and the court held that the termination of employee in such cases would amount to termination of probationary service. Precisely the case has happened in this case. As such interference by this Tribunal is not possible. However as the applicant is a Scientist and that because he wanted a transfer to Madras, applicant who was taking leave wanted

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to avoid the transfer. He being a scientist and the services of scientists are necessary and the applicant is now willing to serve at Madras it would be open for the respondents to consider his case for fresh employment in case they approached them. With the above observations the application is disposed of with no order as to costs.



(M Y PRIOLKAR)
MEMBER (A)



(U C SRIVASTAVA)
VICE CHAIRMAN