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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.919/95.

DATED : 13-08-1999

E.Jebamani

Applicant.

Mr. V.S.Masurkar

Advocate

Applicant.

Versus

Union of India & Ors.

Respondent(s)

Mr.J.P.Deodhar

Advocate for

Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairma,

Hon'ble Shri B.N.Bahadur, Member (A).

(1) To be referred to the Reporter or not? Yes

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

R. G. Vaidyanatha
(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.919/95.

Friday, this the 13th day of Augst, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member(A),

E.Jebamani,
C/o. Mrs.Neeta V.Masurkar,
D-35, Sub-sector-II, Sector - 4,
Airoli,
New Bombay - 400 708.
(By Advocate Mr.V.S.Masurkar).

...Applicant.

Vs.

1. Union of India through
through the Secretary,
Department of Atomic Energy,
C.S.M.Marg, Anushakti Bhavan,
Bombay - 400 039.
2. The Additional Secretary,
Department of Atomic Energy,
Government of India,
C.S.M.Marg,
Bombay - 400 039.
3. Director,
Government of India,
Department of Atomic Energy,
Directorate of Estates Management,
V.S.Bhavan, Anushaktinagar,
Bombay - 400 094.
4. State of Tamilnadu,
through Superintendent of Police,
District-Police Office,
Ooty - Nilgiris,
Tamilnadu State - 643 001.
(By Advocate Mr.J.P.Deodhar).

...Respondents.

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the
Administrative Tribunals Act, 1985. Respondents No.1 to 3 have
filed their reply, but Respondent No.4 has remained unrepresented.
We have heard the learned counsels appearing on both sides.

...2.



2. The applicant's case is as follows.

The applicant was a permanent employee in the Tamil Nadu Police in the State of Tamil Nadu. He had put in 16 years of service. He applied for the post of Assistant Security Officer as per the advertisement issued by R-3. The applicant was appointed as Assistant Security Officer in the office of the Respondent No.3. The offer of appointment is dt. 25.4.1991. The applicant resigned his job in Tamil Nadu to take up the appointment under Respondent No.3. The applicant joined the service of R-3 as an Assistant Security Officer in pursuance of the appointment order dt. 8.7.1991. Though his probation period was extended once, subsequently he has completed the probation period. The applicant received a show cause notice from the Administration dt. 24.5.1993 alleging that he has suppressed certain factual information in the attestation form. After getting further information from the administration, the applicant replied to the show cause notice. Then, it is stated that without holding any inquiry and in violation of principles of natural justice R-3 issued an order of termination dt. 11.11.1993 with immediate effect. The order is purported to have been issued under Rule 5 of the CCS (Temporary Service) Rules, 1965. The applicant preferred an appeal to R-2, but the appeal was dismissed. The applicant is put to great hardship due to the order of termination. The applicant was not a temporary servant and hence, 1965 rules cannot be applied to him. Even if the applicant is held to be a temporary government servant, he is entitled for protection under Article 311 of the Constitution of India. But, the applicant's services have been summarily dispensed with without holding any enquiry. When the probation

period came to an end, the applicant must be deemed to be a permanent government servant. The applicant ^{has} approached this Tribunal for quashing the impugned orders dt. 11.11.1993 of the Competent Authority and 24.3.1995 of the Appellate Authority and for a direction to respondents to reinstate the applicant forthwith with back wages and continuity in service and further consequential reliefs.

3. The respondents in their reply have asserted that the orders have been passed as per rules. That there is neither violation of Article 311 of the Constitution nor the principles of natural justice. The attestation form has to be filled in by every government official on appointment, character and antecedents must be mentioned so that they can be got verified by the appointing authority. The attestation form contains warnings that if there is any false information or any relevant information is suppressed then the services can be terminated. The order of termination is in terms of the attestation form and hence question of conducting enquiry does not arise. Even otherwise, it is stated that the applicant was a temporary servant, notwithstanding the termination of probation period and therefore his services can be terminated without any enquiry under Rule 5 of the CCS (Temporary Service) Rules. The applicant has suppressed the information of his participation in Police Strike, reinstatement in service and punishment given to him of stoppage of increments for two years by Tamil Nadu Police. The suppression of vital information in Column No.11(B) of the Attestation Form was fraudulent with intention to get employment wrongfully. After coming to know ^{of} suppression of this vital

information, the department has observed the principles of natural justice by issuing show cause notice and then after getting the reply of the applicant, the services came to be terminated. It is therefore stated that the action taken by the respondents is perfectly according to law and no ground is made out for interfering with the same.

4. Mr.V.S.Masurkar, the learned counsel for the applicant, contended that the applicant cannot be a temporary servant since he had completed the probationary period. His next submission is that applicant's services could not be terminated without holding an enquiry under the CCS (CCA) Rules and he is entitled to protection under Article 311 of the Constitution of India. On the other hand, the learned counsel for the respondents contended that notwithstanding the completion of probation period applicant continues to be a temporary servant. Further it is submitted that this is a case of simplicitor termination not only under Rule 5 of the CCS (Temporary Service) Rules, 1965, but also under the terms of contract of appointment and the terms of attestation form.

5. In the light of the arguments addressed before us, the point that falls for determination is whether the order of termination dt. 11.11.1993 is illegal and liable to be quashed.

6. The order of the appointment is dt. 8.7.1991 and it is at page 53 of the paper book. The order clearly says that applicant is appointed in a temporary capacity and his appointment is subject to the terms and conditions in the offer of appointment dt. 25.4.1991.

Then, we have the letter of offer of appointment dt. 25.4.1991 at page 36 of the paper book. It clearly says that the

appointment is temporary, but likely to be continued indefinitely. It also mentions that applicant will be on probation for a period of one year which may be extended by the Competent Authority. Then, it says that during the probation period the services could be terminated without notice. Then it further provides as follows:

"After the probationary period, your services are liable to be terminated in accordance with Rule 5 of CCS (Temporary Service) Rules, 1965 as amended from time to time".

Therefore, though the period of probation is mentioned in the offer of appointment, it is made clear that the appointment is temporary and even after probation his service can be terminated under the CCS (Temporary Service) Rules, 1965. But, regarding other matters, para 4 of the letter says that he will be governed by the relevant orders of the Government.

In the present case, the applicant's services have been terminated as per the letter of offer of appointment.

7. Then, another important document which is directly bearing on the point is attestation form which ^{is} at page 63 of the paper book. It contains photograph of the applicant with his signature. The applicant has himself filled in all the columns. Significantly, he has left Column No.11.B. ^{BLANK} Column 11.B) reads as follows :

"If the previous employment was under the Government of India, a State Government/an Undertaking owned or controlled by the Government of India or a State Government/an Autonomous Body/University/Local Body.

If you had left service on giving a month's notice under

Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, or any similar corresponding rules were any disciplinary proceedings framed against you, or had you been called upon to explain your conduct in any matter at the time you gave notice of termination of service, or at a subsequent date, before your services actually terminated.

In the column meant for writing answers to the above questions, it is conspicuously left blank.

A perusal of the attestation form shows that applicant has filled up most of the columns, against some columns he has given the answer as 'nil' i.e. answer to Column 3 (b) and answer to Column 5(a).

A perusal of Column 11.B) shows that the information sought is whether under similar corresponding rules any disciplinary proceedings were framed against the applicant. The answer is left blank.

8. According to the respondents during some correspondence it has come to light that the applicant had participated in a Police Strike in Tamil Nadu and he was dismissed from service, but later, he was reinstated and was given some minor penalty. The respondents contention is that this vital information about disciplinary enquiry and the punishment thereon was not mentioned in answer to Column No.11.B) and thereby the applicant has suppressed a material information from the knowledge of the respondents while filling up the attestation form. We must bear in mind that applicant was a Police official and he applied for the post of an Assistant Security Officer, who has to normally look after discipline in the organisation. This vital

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information about about his participation in strike and consequent punishment would be very vital information to the administration to take a decision whether to appoint such a person for a job like a Security Officer. If it is merely the job of a Class IV official or ordinary clerk, the matter would be different. When the person to be appointed is for a post like Security Officer or Assistant Security Officer, the said information would have been very vital and the applicant had admittedly not given this information in the attestation form and he has conspicuously left it blank. When the respondents brought this fact to his notice and issued him a show cause notice, he did not meet this point at all, but went on taking technical defence. Even after obtaining copy of the attestation form, he never gave the information required under 11.B in reply to the show cause notice.

9. Next we come to first page of the attestation form which has three warnings printed on it. The first warning is that if a false information is given or some factual information is suppressed then it would be a dis-qualification and he may not be appointed. But, for our present purpose, since the applicant has already been appointed, relevant warning is warning No.3 which reads as follows :

"3. If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of a person, his services would be liable to be terminated."

The above warning clearly shows that if any factual information is suppressed and it comes to notice of the

administration at any time, his services are liable to be terminated.

In the present case, the administration has found that ~~applicant~~ has suppressed a vital information by not filling up Column No.11.B and therefore in view of warning No.3 in the attestation form, applicant's services have been terminated. The administration has taken care by issuing a show cause notice to the applicant and thereby observing the principles of natural justice. The applicant could have come with some reply as to why he did not mention the relevant information, but went on evading the issue by giving some technical replies. Even in the present OA, the applicant offers no explanation as to why he suppressed this vital information about participation in the strike, dismissal and consequent reinstatement etc. when he was working in the Tamil Nadu Police.

This is a case of terminating services in terms of the order of appointment. The order of appointment must be read along with attestation form, offer of appointment and the actual appointment order. Reading of the documents together, we find that the applicant's appointment was a temporary one, his services could be terminated under the Temporary Service Rules even after probation and further if any factual information is suppressed or false information is given, then services could be terminated at any time.

10. The argument of the learned counsel for the applicant is that this is not a case of temporary appointment at all, since the applicant had been put on probation and he has completed the probation period and therefore he becomes a permanent servant and hence his services cannot be terminated except by holding an

enquiry under the CCS (CCAO Rules and also pressed into service the protection afforded under Article 311 of the Constitution of India.

In our view, as per the offer of appointment and letter of appointment, this is a temporary appointment, irrespective of the question whether he was on probation and he has completed the probation period. In the offer of appointment it is clearly mentioned that even after probation, services can be terminated under the Temporary Service Rules. If a service is terminated under the Temporary Service Rules, then the question of holding enquiry under CCS (CCA) Rules or protection under Article 311 of the Constitution of India will not arise at all. It is well settled and there can be no dispute that termination of services of a temporary servant under CCS (Temporary Service) Rules the question of holding enquiry does not arise.

11. It may be in a given case where services are terminated casting a stigma on an official, then enquiry may be necessary even if he is a temporary government. But, if it is a case of simplicitor termination under the Temporary Service Rules, then holding of enquiry is not necessary. The order of termination is dt.11.11.1993 and it is at page 27 of the paper book. It shows that it is a simplicitor termination under Rule 5 of CCS (Temporary Service) Rules, 1965 and does not mention of any reason, much less casting a stigma. It is an order of termination simplicitor. By no stretch of imagination it can be called a termination which casts stigma on the applicant so as to call for an enquiry.

Even if we lift the veil and find out the reason for termination, it only shows that the services are terminated

because applicant did not furnish the necessary information and suppressed the vital information in answering Column No.11.B of the attestation form. The respondents are not stating that applicant is a bad man etc., but they only say that the required information should have been furnished by the applicant and he did not furnish it and in view of warning No.3 of the attestation form his service is liable to be terminated. If the respondents had taken a stand that applicant was a bad man because he participated in strike or his character was not correct or alleging any mis-conduct against the applicant then it could be a termination casting stigma on the applicant. Here it is a case of simplicitor termination and the motive for the termination is that the applicant had suppressed some vital information by leaving Column No.11.B blank in the attestation form. After going through the entire materials on record, we do not find any merit in the contention of the learned counsel for the applicant that the order of termination ~~casts~~ a stigma on the applicant and a regular enquiry was necessary.

We must add that the respondents have observed the principles of natural justice in giving a show cause notice to the applicant and after giving an opportunity they have passed the impugned order dt. 11.11.1993.

12. Now, let us consider the law bearing on the point.

The learned counsel for the applicant has invited our attention to some decisions.

In AIR 1986 SC 1108 (Jagdish Prasad Vs. Sachiv Zila Ganna Committee), it was held that it is not a case of simplicitor termination, but it is an order of termination casting stigma.

The Supreme Court pointed out that regular enquiry should have

been held as provided in Regulation No.68 of the U.P. Cane Co-operative Service Regulation, 1975. The question of terminating the services of a temporary employee by a simplicitor order of termination was neither raised nor decided by the Supreme Court in that case. We are concerned with an order of termination under the Temporary Service Rules, where the services can be terminated without holding any enquiry by the simplicitor order of termination. But, there is nothing to show that there are any such similar provisions under the U.P. Cane Co-operative Service Rules providing for summary termination of a temporary employee. Further, in that case, the termination was on the ground that applicant was caught in a corruption case, but in the present case the termination is on a sole ground of suppressing vital information while filling in the attestation form. Here, the order of termination is issued in view of the terms of employment including the condition in the attestation form. Therefore, in our view, this decision has no bearing on the facts of the present case.

Then, reliance was placed on a decision of a Division Bench of this Tribunal reported in 1991(15) (ATC) 273 (Hiralal Lalnath Koche Vs. D.G. Ordnance Service & Anr.). Even in that case, the services were terminated for suppression of facts. What happened in that case was, after the verification of antecedents was done and since it was noticed that certain information had been suppressed, straight away an order of termination was issued. The Tribunal held that such an order could not have been passed without giving an opportunity to the official of being heard. It was pointed out that failure to do so was violative of the principles of natural justice. But, in

the present case after noticing that vital information had been suppressed in not filling up Column No.11.B a show cause notice was issued to the applicant and he had an opportunity of replying to the same and then only as per the condition or warning mentioned in the attestation form the impugned order has been issued. In our view, there is no violation of principles of natural justice since show cause notice had been issued to the applicant.

Then, reliance was placed on an unreported Judgment of a Division Bench of this Tribunal dt. 29.9.1995 in OA 404/93 in the case of Lakshman Deshmane Vs. Union of India & Anr. That was a case where services were terminated under the Temporary Service Rules. During the verification of the antecedents it was found that the applicant in that case was involved in a criminal case which was still pending. In view of suppression of information the services came to be terminated. What the Division Bench has observed is that it is not a case of conviction, but mere pendency of criminal case and that by itself is not sufficient to terminate the services of the applicant. It was therefore held that without holding an enquiry and there being no conviction of the applicant, applicant's services could not have been terminated due to pendency of criminal case and the order was set aside on that ground. In our view, this observation of the Division Bench cannot be taken as good law in view of the observation of the Supreme Court in the case of the Delhi Administration Through its Chief Secretary & Ors. Vs. Sushil Kumar (reported in 1997 (1) SC SLJ 10). That was also a case where a candidate had applied for the post of Constable in Delhi Police Service. He was cleared in the written test and viva voce

and found physically fit. But, during verification of antecedents it was found that a criminal case was pending against him. Therefore, the administration thought he was not fit to be appointed and accordingly he was not appointed. The said person approached the Principal Bench of this Tribunal at New Delhi. The Tribunal allowed the appeal on the ground that the candidate has since been discharged or acquitted in the criminal case he cannot be denied the right of appointment. The Supreme Court observed that verification of antecedents is one of the important criteria to test whether the selected candidate is suitable to the post or not. It is pointed out, the subsequent acquittal in the criminal case is not relevant at all.

Similarly, in the above case the question whether it was a pendency of criminal case and not ended in conviction was not at all relevant, but the point was whether he had suppressed a vital information or not.

Similarly, in the present case the truth or otherwise of the previous departmental enquiry against the applicant was not relevant at all. The fact is that applicant had suppressed a vital information about involvement in a Disciplinary Enquiry due to participation in a Police Strike or not. We have already seen that Column No.11.B is conspicuously left blank. If the applicant had disclosed that information, then the administration might not have appointed him to this job since it was a post of an Assistant Security Officer.

13. On the other hand, the respondents counsel invited our attention to a decision reported in ATR 1988 (1) CAT 464 in the case of (Satbir Singh Vs. Union of India & Ors.), where it was found out that the official had been appointed and he had

suppressed some vital information about pendency of criminal case and his arrest in the declaration form. The Tribunal held that the official was bound to furnish attestation form along with the necessary declaration. Then what has to be seen in such a case is whether the suppression of material fact is a foundation or motive for termination. Therefore, the Tribunal held that if suppression of fact is a motive for termination of a temporary civil servant then the order is perfectly valid within the meaning of Rule 5 of the Temporary Service Rules. Having observed like that, they found that principles of natural justice had not been followed by not giving an opportunity to the official to explain his conduct on this point, therefore the order was set aside by giving liberty to the administration to give an opportunity to the petitioner to submit his explanation and then take action according to law.

In the present case, such a situation does not arise, since principles of natural justice have been complied with by giving show cause notice to the applicant.

In this connection, we may also refer to a decision of the Supreme Court in the case of The Oriental Insurance Co. Ltd. Vs. T.Mohammed Raisuli Hassan (1993 (1) SLR SC 431), where the Supreme Court observed that a temporary appointment can be terminated in terms of the appointment order. We have already pointed out, how in the present case the services are terminated as per the conditions in the appointment order and also as per the condition in the attestation form. Therefore, this decision fortifies our view that a service can be terminated as per the terms of the Contract of Employment or Order of Employment.

One of the contentions urged by the learned counsel for

the applicant is that when applicant has been appointed on probation and he has completed the probation period he cannot be called as a temporary servant and his services cannot be terminated under Rule 5 of the Temporary Service Rules. In our view, this argument has no merit. Even a temporary servant can be put on probation and he can be continued indefinitely. We are fortified in our view by a decision of the Supreme Court in the case of Union of India and Ors. Arun Kumar Roy (1986 (1) SLJ 474), where also identical appointment order had been issued to the candidate. There also the appointment was stated to be temporary, but liable to be continued indefinitely and the official was on probation for a certain period. The argument that temporary servant will not be put on probation and the fact that the official is put on probation shows that it is a case of permanent employment has been rejected by the Supreme Court by its observations in para 14 of the reported judgment. The Supreme Court clearly observed that mere putting an employee on probation does not make the appointment a permanent appointment. The other point decided in that case is not relevant for our present purpose.

Our view that an appointment can be terminated in terms of the order of appointment is also fortified by the observation of the Supreme Court in the case of State of Rajasthan and Ors. Vs. Rameshwar Lal Gahlot (1996 (1) SC SLJ 197) and in particular following observation in para 4 of the reported Judgment is relevant, which reads as follows :

".....the employer can terminate the services in terms of the letter of appointment unless it is a colourable exercise of power."

In the present case, the authorities have not mis-used that power, but on coming to know that a vital information had been suppressed, they have issued show cause notice to the applicant and then by observing the principles of natural justice they have terminated the services of the applicant under the terms of the order of appointment read with condition in the attestation form.

In this connection, we may refer to a decision of a Division Bench of the Calcutta Bench of this Tribunal in the case of Jagga Dutta Chatterjee Vs. Union of India & Ors. (1990 (1) SLJ 52), where in an identical case services were terminated on the ground of giving false information/suppressing of vital information. It was held that termination is valid in law in view of the warning in the attestation form. Same view is taken in the case of Bhagirath Prasad Alias Dindayal Vs. Union of India and Another {(1989) 9 ATC 437}, where an official had been discharged during probation on account of suppression of certain facts regarding involvement in criminal case while filling up the attestation form and it was a case of suppression of fact and this was the motive for termination and not the foundation for the termination and hence a valid order under Rule 5 of the CCS (Temporary Service) Rules, 1965. These two decisions fully fortify the view taken by us.

14. In view of the above discussion, we hold that in the present case the applicant has suppressed vital information as pointed out already by leaving blank Column No.11.B. The principles of natural justice have been observed. Therefore, the order of termination under the Temporary Service Rules is perfectly justified and according to law. No ground is made out for quashing the same.

At this stage, we may observe that applicant had put in about 16 years service in the Police Department at Tamil Nadu. He gave technical resignation in order to join the post under the Respondents as an Assistant Security Officer. Since he had given a technical resignation and has joined the post under the Respondents and since we are now upholding the order of termination, it is open to the applicant to move his parent department to take him back to service since he had given only a technical resignation to take up job in another department which has now come to an end. It is open to the parent department viz. the Tamil Nadu Police Department to consider such a request of the applicant according to law.

15. In the result, the application fails and is dismissed.
No order as to costs.

B Bahadur
(B.N.BAHADUR)

MEMBER (A)

R G Vaidyanatha
(R.G.VAIDYANATHA) 13/8/99
VICE-CHAIRMAN

B.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO.36/99
IN
ORIGINAL APPLICATION NO.919/95.

DATED : 30.9.1999.

Coram : Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member(A).

E.Jebamani,
C/o. Mrs.Neeta V.Masurkar,
D-35, Sub-sector-II, Sector - 4,
Airoli,
New Bombay - 400 708.

...Applicant.

Vs.

1. Union of India through
the Secretary,
Department of Atomic Energy,
C.S.M.Marg, Anushakti Bhavan,
Bombay - 400 039.
2. The Additional Secretary,
Department of Atomic Energy,
Government of India,
Government of India,
C.S.M.Marg,
Bombay.
3. Director,
Government of India,
Department of Atomic Energy,
Directorate of Estates Management,
V.S.Bhavan, Anushaktinagar,
Bombay -400 094.
4. State of Tamilnadu,
through Superintendent of Police,
District-Police Office,
Ooty - Nilgiris,
Tamilnadu State - 643 001.

...Respondents.

: ORDER ON REVIEW PETITION BY CIRCULATION :

This is a petition for reviewing our order dt. 13.8.1999
in OA 919/95. We have perused the contents of the Review
Petition and the entire case records.

...2.

(Signature)

2. The applicant's services came to be terminated by the respondents on the ground that he had suppressed material information. The applicant had challenged the termination on the ground that no enquiry was held and therefore, the order is bad in law.

3. After hearing both the sides, we found that this is a case of termination on the basis of the conditions and warnings given in the Attestation Form which provided furnishing false information or suppression of material information is a ground for termination at any stage. We also noticed that the department has observed the principles of natural justice by issuing a show cause notice to the applicant and then after receiving reply from the applicant the impugned order was passed. We have also rejected the contention of the applicant that a regular enquiry was necessary in a matter like this.

4. The applicant still persists in the RP in contending that a regular enquiry should have been held, which we ^{have} ~~had~~ specifically rejected in our order. This is not a case of obtaining appointment on a false certificate so that an enquiry is necessary under O.M. dt. 19.5.1993 or on the basis of a Judgment of another D.B. of this Tribunal dt. 28.7.1999 where the question was about obtaining appointment on a false certificate. But, in the present case the question was about suppression of material fact in a particular column in the attestation form.

5. After going through the materials on record, we do not find that any case is made out to show that there is any error apparent on record. No grounds are made out within the meaning of Order 47 Rule 1 of CPC for exercising review jurisdiction.

Hence, we do not find any merit in the Review Petition.

6. For the above reasons, the Review Petition is rejected by this order on circulation.

B.N.Bahadur

(B.N. BAHADUR)

MEMBER (A)

R.G.Vaidyanatha

(R.G. VAIDYANATHA)

VICE-CHAIRMAN

B.