

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH
AT HYDERABAD

O.A. No. 386/89.

Dt. of Decision

~~T.A. No.~~

R. Jayakaran

Petitioner

Shri M.V.S.D. Prasad Rao (Not present)

Advocate for
the petitioner
(s)

Versus

The Chairman, Indian Space Research Organisation,
Antharicksha Bhavan, Bangalore & 3 others Respondent.

Shri N.V. Ramana, Addl. CGSC

Advocate for
the Respondent
(s)

CORAM

THE HON'BLE MR. A.B. Gorthi : Member(A)

THE HON'BLE MR. T. Chandrasekhara Reddy : Member(J)

1. Whether Reporters of local papers may be allowed to see the judgement? ✓
2. To be referred to the Reporters or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓
5. Remarks of Vice-Chairman on Columns 1, 2, 4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

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M(J).

HABG
M(A).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ; HYDERABAD BENCH
AT HYDERABAD.

O.A.No.386/89.

Date of Judgement : 30-4-1993

R.Jayakaran

.. Applicant

Vs.

1. The Chairman,
Indian Space Research Orgn.,
Antharicksha Bhavan,
Bangalore.

2. Head,
Personnel & General Admn.,
SHAR Centre,
Sriharikota-524124.
Dt. Nellore.

3. Controller,
SHAR Centre,
Sriharikota-524124.
Dt. Nellore.

4. Principal,
Space Central School,
Sriharikota-524124.
Dt. Nellore.

.. Respondents

Counsel for the Applicant :: Shri M.V.S.D.Prasad Rao
(Not present)

Counsel for the Respondents:: Shri N.V.Ramana, Addl. CGSC

CORAM:

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

1 Judgement as per Hon'ble Shri A.B.Gorthi : Member(A) X

Aggrieved by an order dt. 27.4.89 terminating his services with immediate effect the applicant has now prayed that the impugned order of termination be set aside with all consequential benefits.

2. The applicant, after due selection, was appointed to the post of Trained Graduate Teacher in the Space Central School, Sriharikota vide appointment order dt. 6.4.88. The applicant joined service on 1.7.88 and he was put on probation for a period of one year as per the terms and conditions of his appointment. Although he performed his duties quite satisfactorily, his services were intended to be terminated

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by means of an impugned order which assigned no reason whatsoever. The applicant, however, felt that the order of termination was passed because of the fact that he was involved in a suit for divorce that was pending in the District Court, Vellore.

3. The respondents in their reply affidavit have stated that after the applicant was appointed in the Space Central School the respondents carried out enquiries with the authorities in the schools where the applicant had previously served. The report received from the SBDA Matric School, Madras and St. John's Senior Secondary School, Madras revealed that not only the applicant was irregular and unpunctual in attendance but was also found to be misbehaving with some girl students. In view of the revelation of his previous conduct and because of the fact that the applicant was appointed on probation for a period of one year the respondents considered it appropriate to terminate the applicant's services purely in the overall interest of the school and the students therein.

4. None appeared for the applicant although the case had been listed for rejection on 23.4.93. The learned counsel for the respondents has drawn our attention to paras 1(d) and (e) of the offer of appointment which read as under:

- 1(d) You will be on probation for a period of one year from the date of your appointment, which may be extended or curtailed at the discretion of the competent authority.
- (e) During the period of probation, your services are liable to be terminated without notice or without assigning any reasons therefore if your performance is found to be not satisfactory or if the Government is satisfied that you were ineligible for recruitment to the service/post in the first instance itself.

There is no averment anywhere in the respondents' reply affidavit to the effect that they found the services of the applicant as unsatisfactory during the period of his service on probation with their school. It is also not the case

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of the respondents that the applicant was otherwise ineligible for recruitment to the post. The question, therefore, for our decision is whether the services of the applicant could be terminated during the period of his probation for the sole reason that his conduct in the previous institutions where he had served prior to taking up the job in the school of the respondents was not satisfactory or that there was an allegation of his misconduct during his service with the schools where he had previously served. From the very terms and conditions of the appointment order it would be evident that this question has to be answered in the negative.

5. Admittedly, the applicant was appointed on a purely temporary basis and was on probation. The order of termination is also simpliciter in nature and does not cause any stigma on the applicant. In this context we may refer to the judgement of the Hon'ble Supreme Court in the case of Oil & Natural Gas Commission Vs. Dr. Md. Iskander Ali (AIR 1980 SC 1242) wherein it was observed:

"Where the short history of the service of the probationer appointed in a temporary post clearly showed that his work had never been satisfactory and he was not found suitable for being retained in service and that was why even though some sort of an enquiry was started, it was not proceeded with and no punishment was inflicted on him and in these circumstances, if the appointing authority considered it expedient to terminate the services of the probationer it could not be said that the order of termination attracted the provisions of Article 311, when the appointing authority had the right to terminate the service without assigning any reasons. In such a case even if misconduct, negligence, inefficiency might be the motive or the inducing factor which influenced the employer to terminate the services of the employee a power which the employer undoubtedly possessed, even so as under the terms of appointment of the employee such a power flowed from the contract of service, termination of service ~~which~~ could not be termed as penalty or punishment."

6. The applicant being a temporary hand had no right to the post. There can also be no doubt that during the period of probation the applicant's services could be terminated without notice as stated in the appointment order itself vide clauses in paras 1(d) and (e) referred to above. The scope of the said clauses is, however, restricted to the conduct of the

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applicant during the period of his probation or to the question of his eligibility for appointment. In the instant case, the respondents' version is that they terminated the applicant's services for the reason that they received some reports regarding some alleged misbehaviour of the applicant in the institutions where he had served prior to joining the Space Central School of the respondents. That being so, there can be no doubt that the discharge of the applicant carried with it a certain amount of stigma and is in the nature of a penalty or punishment. In this context we rely on the judgement of the Hon'ble Supreme Court in the case of Anoop Jaiswal Vs. Govt. of India (AIR 1984 SC 636) wherein it was observed:

"The form of the order is not decisive as to whether the order is by way of punishment and that even an innocuously worded order terminating the service may in the fact and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Art.311(2). Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.

Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation which is the basis or foundation for the order should be read alongwith the order for the purpose of determining its character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for the incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground if the servant has not been afforded a reasonable opportunity to defend himself as provided in Art.311(2) of the Constitution.

7. The allegation of misconduct against the accused were of a serious nature and received by the respondents behind the back of the applicant. It would be violative of the principles of natural justice if the services of a Govt. employee were to be terminated on mere complaints of misconduct when such misconduct has neither been enquired into nor the employee given an opportunity to prove his innocence. We have, therefore, no hesitation to hold that the impugned order of termination is invalid. The same is, therefore, hereby set aside.

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8. At the time of admission of this O.A. an interim order was passed by which the applicant continued in the same post. It is open to the respondents to consider the quality of his performance during the period from the date of his joining the school and to decide whether he should be confirmed or whether his temporary service/period of probation be extended or not. A decision in this regard may be taken by the respondents in accordance with law.

9. The application is allowed in the above terms. There shall be no order as to costs.

T. Chandrasekhara Reddy
(T.Chandrasekhara Reddy)
Member(J).

A.B.Gorthi
(A.B.Gorthi)
Member(A).

Dated 30 April, 1993.

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Deputy Registrar(J)

To

1. The Chairman, Indian Space Research Organisation, Antharicksha Bhavan, Bangalore.
2. The Head, Personnel & General Administration, SHAR Centre, Sriharikota-524124. Dt.Nellore.
3. Controller, SHAR Centre, Sriharikota-524124, Nellore Dist.
4. The Principal, Space Central School, Sriharikota, Nellore Dist.
5. One copy to Mr.M.V.S.D.Prasad Rao, Advocate, 2-2-1144/16C New Nallakunta, Hyderabad.
6. One copy to Mr.N.V.Ramana, Addl.CGSC-CAT.Hyd.
7. One copy to Mr.A.B.Gorthi, Hon'ble Member(A)CAT.Hyd.
8. One copy to Hon'ble Mr.T.Chandrasekhar Reddy, M(J)CAT.Hyd.
9. One copy to Deputy Registrar(J)CAT.Hyd.
10. Copy to All Benches and Reporters as per standard list of CAT.Hyd.
11. One spare copy.

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