

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

D.A. No. 951/89

T.A. No.

DATE OF DECISION:- 23/04/90

Between:-

Petitioner(s)

Advocate for the
Petitioner(s)

Versus

Respondent.

Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. B.N. Jayasimha, I.C.

THE HON'BLE MR. Dnyaneshwar, I.C.

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

Ans.

b/w
(B.N.J)
H.M.

Ans.
(D.S.R)
H.M.G.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO.451 of 1989

Date of Order:23/04/1990

T.Sujatha

....Applicant

Versus

The Director, Department
of Space, SHAR Centre, Sriharikota
Range, Nellore District.Respondent

FOR APPLICANT: MR.Nalin Kumar, Advocate for
Mr.K.G.Kannabiran, Advocate

FOR RESPONDENTS: Mr.E.Madan Mohan Rao, Addl.Standing
Counsel for the Department

C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI D.SURYA RAO: MEMBER(JUDICIAL)

(Judgment delivered by Hon'ble Shri B.Surya Rao, Member(J)

1. The applicant states that she was originally appointed as a Technician in Hindustan Aeronautics Limited, Hyderabad and subsequently worked as Mechanic 'B' in the said Organisation between February 1983 to 30-8-1988. While working at Hindustan Aeronautics Limited ('HAL' for short) she applied for the post of Technical Assistant 'C' in the SHAAR- Respondent Organisation. She was selected and issued an offer of appointment dated 20-7-1988. The HAL by

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letter dated 6-8-1988 requested the respondent to permit the applicant to join their organisation on 1-9-1988 and relieved her on 30-8-1988. The applicant joined the respondent as Technical Assistant 'C' on 9-9-1988. Thereafter, ~~on 13-12-1988~~ she received the impugned order no. SCF:PGA:ESTT:III:E: 13473-4, dated 29th ~~6~~ terminating her services under Clause 1(e) of the offer of appointment dated 20-07-1988. She alleges that no notice to the Show cause was issued nor any enquiry was held before the issuance of the impugned Order and the real motive in issuing impugned order is to punish her on the basis of a report submitted by the police on verification. It is alleged that while working in HAL, a memo dated 13-12-1986 was issued alleging that she along with 37 others shouted slogans, behaved in a most indecent and disorderly manner and that in order to secure their demands they wrongfully confined two officers. Thereafter, a departmental enquiry was held against all the 38 employees including the applicant and for the alleged mis-conduct and a punishment of postponement of annual increment was imposed. While issuing service certificate dated 30-8-1988 by the HAL, no mention of the alleged incident was made. After the applicant's appointment in the respondent-Organisation the latter sent the matter for police verification and acting on the police verification the impugned order was passed. It is contended that the Clause 1(e) of the offer of appointment ^{which reads} that "during the period of probation, your services are liable to be terminated without notice or without assigning any

reasons thereof 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" is unconscionable, arbitrary and opposed to public policy and violative of Articles 14, 38, 39 and 41 of the Constitution. It is contended that in any event without notice about the unsatisfactory performance or a show cause notice her services could not have been terminated. She, therefore, seeks a direction to set-aside the impugned order dated 29-6-1989 and ⁵ restate her into service with retrospective effect with all consequential and ancillary benefits including continuity of service, increments, etc.

2. On behalf of the respondents a counter has been filed stating that the applicant was offered the post of Technical Asst. 'C' vide offer of appointment dated 20-7-1988, that clause 1(e) of the said offer of appointment provides, ^{for} termination during the period of probation without notice or without assigning any reasons therefor if her performance is found to be not satisfactory or if the Government found that she is ineligible for recruitment and that the applicant accepted these terms and conditions of appointment. Having accepted the terms and conditions, she has no right to contest the said terms and conditions. It is contended that the respondent is empowered to issue the impugned order and that the impugned order is not passed as a measure of punishment and as such there is no need or ground to issue show cause notice or hold any enquiry.

It is further contended that the impugned order does not cast any stigma on the applicant and hence the application is liable to be dismissed.

3. We have heard Shri Nalin Kumar, advocate, on behalf of the learned counsel for the applicant and Shri E. Madan Mohan Rao, Addl. Standing Counsel for the Department.

4. Shri Nalini Kumar contends that even if the applicant's services have been terminated on the ground of unsatisfactory work, the respondent could not have terminated on this ground unless a communication or intimation has been given to the applicant giving the details as to how her work was unsatisfactory. He contends that such a notice was incumbent to enable the applicant to improve herself and that straight away termination orders could not have been issued. He relies upon the decision of the Supreme Court in Dr. (Miss) Sumati Versus UOI and others (1989(2) SLR 422). That was a decision in regard to termination of services of an adhoc employee on the ground of unsatisfactory performance. The Supreme Court had observed as follows:

"5. We must emphasise that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give-and take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely

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Communication of the assessment of work in such cases may put the employee on the right tract. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability.

6. The counsel for the respondents argued that the appellant being temporary servant no enquiry need be held for her removal if her services are not up to the mark. He placed reliance on the decisions of this Court in : (i) Champaklal Chimanlal Shah Vs. The Union of India (1964(5)SCR 190) and (ii) Oil and Natural Gas Commission Vs. Dr. M. D. S. Iskender Ali (1980(3) SCC 428). Both the cases pertain to the termination of a temporary Government servant who was on probation. The termination was on the ground that his work had never been satisfactory and he was not found suitable for being retained in the service. This Court held that the termination of service in such cases on the ground of unsuitability for the post does not attract Article 311(2) of the Constitution.

7. There cannot be any dispute about this proposition. We are not laying down the rule that there should be a regular enquiry in this case. All that we wish to state is that if she is to be discontinued it is proper and necessary that she should be told in advance that her work and performance are not up to the mark.."

Applying the above observations, we ^{hold} find that the termination of the applicant without administering any warning or without informing the applicant in advance ^{that} ~~she~~ was not satisfactory ~~in~~ ⁱⁿ her services could not have been terminated. The learned counsel for the applicant has also contended that the termination

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an advise of the applicant was made on the basis of a police verification, and it is unnecessary for us to go into this aspect as we are allowing the application applying the above-cited decision of the Supreme Court. Accordingly the impugned order dated 29-5-1989 is set-aside and the application is allowed. The respondent is directed to reinstate the applicant with all backwages and other ancillary benefits as prayed for. No costs.

(Dictated in open Court)

B.N.Jayasimha

(B.N.JAYASIMHA)
VICE CHAIRMAN

D.Surya Rao

(D.SURYA RAO)
MEMBER (JUDL.)

DT.23rd April, 1990.

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For Deputy Registrar (J) 28-5-90

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TO:

1. The Director, Shar Centre, Government of India, Department of Space, Shar Centre, Sriharikota Range-P.O. Nellore District.
2. One copy to Mr.K.G.Kannabiran, Advocate, 10-3-29/2, East Marredpally, Sec'bad-500 026.
3. One copy to Mr.E.Madan Mohan Rao, Addl.CGSC, CAT, Hyd.
4. One spare copy.

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