

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.551/94

Date of order: 25/1/2008

Rajesh Kumar, S/o Sh.Lal Chand, R/o Plot No.74, Chandi
ki Takshal, Harizan Basti, Jaipur.

...Applicant.

Vs.

The regional Provident Fund Commissioner, Nidhi Bhawan,
Vidyut Marg, Jyoti Nagar, Jaipur.

...Respondent.

Mr.M.S.Gurjar-Proxy of Mr.Frahlad Singh for the applicant.

Mr,Gaurav Jain Proxy of Mr.N.E.Jain, Counsel for respondent.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member


Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the order dated 10.10.94 and to direct the respondents to reinstate the applicant in service with full back wages and all consequential benefits.

2. After filing this O.A, this Tribunal stayed the operation of the impugned order at Annx.A1 on 9.11.94 which was ultimately confirmed vide order dated 12.1.95.

3. Facts of the case as stated by the applicant are that he was appointed on the post of Safaiwala by letter dated 8.5.91 in the scale Rs.750-940 on probation for a period of 2 years. The applicant completed the period of 2 years probation in May 1993. The period of probation was not extended. It is stated that the applicant received a notice dated 1.2.93 whereby he was called upon to explain within 3 days. Thereafter the applicant submitted the reply and after one year 8 months of filing his reply, the services of the applicant were terminated by the impugned order dated 10.10.94. It is



stated by the applicant that he was never convicted any offence involved moral turpitude and before terminating the services of the applicant no enquiry was conducted, therefore, the impugned order is ex facie illegal, arbitrary and unreasonable. Therefore, the applicant filed the O.A for the relief as mentioned above.

4. Reply was filed. In the reply it was admitted that the applicant was appointed on probation for a period of two years on the post of Safaiwala. It is stated that the attestation form was filled up by the applicant at the time of appointment and the applicant furnished a false information in the attestation form regarding his conviction under Sec.279 IPC which was confirmed from the letter dated 25.11.92 received from the District Magistrate, Jaipur. It is further stated that the applicant was holding temporary post and his probation was not extended, therefore, one month notice period was given to the applicant before his actual date of termination and the order dated 10.10.94 was to be given effect after a period of one month. From the copy of the judgment it was clear that the applicant was convicted by the Court of Judicial Magistrate First Class 9, Jaipur City, Jaipur on 16.11.90 in a criminal case No.4251/90 for the offence of Sec.279 IPC and was sentenced to fine of Rs.300/- Therefore, terminating/discharging the services of the applicant vide the impugned order dated 10.10.94 was in no way illegal, arbitrary and unreasonable and the applicant has no case for interference by this Tribunal.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant vehemently argued that the applicant was appointed on probation for a period of 2 years and his probation was not extended. Therefore

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terminating the services of the applicant by stigmatic ^{order} ~~way~~ was altogether arbitrary, illegal and in violation of the principles of natural justice. On the other hand, the learned counsel for the respondents has argued that the applicant concealed the fact of his conviction while filling up the attestation form, thereby he gave false statement and therefore, the services of temporary employee can be terminated.

7. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

8. An employee in the service is kept on probation with a view to assess his suitability and competency for the post with a view to retain him further in service. If the performance during the period on probation remains satisfactory, the employee can be confirmed on the post. If his performance is required to give him some more time to judge his suitability and competency, the period of probation can be extended or the employer can refuse to extend any further period of his probation.

9. In Dipti Prakash Banerjee Vs. Satvendra Nath Bose, Hon'ble Supreme Court held that if termination is founded on the allegation of misconduct, it will be bad but if the order of termination is an order of simplicitor, it will be valid.

10. In Radhey Shyam Gupta Vs. U.P.State Agro Industries Corpn Ltd. & Anr, 1999 SCC (L&S) 439, Hon'ble Supreme Court held that the termination of the services of a temporary servant or one on probation on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the above facts are merely the motive and not the foundation. The reason why they are the motive is that the assessment is not done with

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the object of finding out any misconduct on the part of the officer. It is done only with a view to decide whether he is to be retained or continued in service.

11. In Chandra Prakash Sahi Vs. State of U.P. & ors, 2000 SCC (L&S) 612, it was held that probationer has no right to post. Therefore, his services can be terminated during and at the end of probation on misconduct. If however, there are allegation of serious misconduct for which DE conducted behind the back to ascertain the truth, such termination is to be treated as punitive but if the enquiry was for determining the suitability of a person for retention in the service/confirmation.

12. In Karnataka State Road Transport Corpn. & Anr. Vs. S.Manjunath etc, 2000 SCC(L&S) 629, the Hon'ble Supreme Court has laid down that services of a temporary Govt servant can be terminated by an order simplicitor. The order simplicitor when the motive has only to assess the suitability of a person concerned for continuance of his service further more. But if the foundation of such termination is misconduct, the order is stigmatic and cannot be passed without following the provisions given in Article 311(2) of the Constitution.

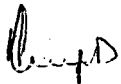
13. In a leading case, V.P.Ahuja Vs. State of Punjab, JT 2000(3) SC 1, the controversy regarding probation of a civil servant came before the Hon'ble Supreme Court. In this case, the services of the appellate were terminated during the probation period on the ground that he had failed in the performance of his duties administratively and technically. Neither any enquiry nor any opportunity of hearing was given to the appellant. The impugned order of termination was set aside and quashed. In this case, the Hon'ble Supreme Court has also taken into consideration the judgment of Deepti Prakash Banerjee (supra).

14. In the instant case, the impugned order dated 10.10.94 makes a mention regarding allegation against the applicant but the provisions of Article 311(2) of the Constitution have not followed. Admittedly, the provisions under Article 311(2) of the Constitution of India have not been followed in this case before issuing the impugned order dated 10.10.94. The order appears to be stigmatic. Therefore, without following the provisions of Article 311(2) of the Constitution, the termination of the applicant is not only illegal but unjust and in violation of Articles 14 & 16 of the Constitution.

15. On the basis of above all, we are of the considered opinion that the impugned order dated 10.10.94 is not sustainable in law.

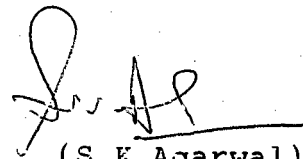
16. We, therefore, allow the O.A and quash and set aside the impugned order dated 10.10.94 (Annx.A1).

17. No order as to costs.



(A.P. Nagrath)

Member (A).



(S.K. Agarwal)

Member (J).