

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, (7)

JAIPUR

Date of decision: 7-12-1995

OA No.237/95

Bal Chand Soni

.. Applicant

VERSUS

Union of India and others

.. Respondents

CORAM:

HON'BLE MR. O.P.SHARMA, MEMBER (ADMINISTRATIVE)

HON'BLE MR. RATTAN PRAKASH, MEMBER (JUDICIAL)

For the Applicant

.. Mr.C.B.Sharma

For the Respondents

.. Mr.K.N.Shrimal

ORDER

PER HON'BLE MR. O.P.SHARMA, MEMBER (ADMINISTRATIVE)

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Bal Chand Soni has prayed that order Ann.A1 dated "12/94" terminating the services of the applicant and order Ann.A2 dated 23-3-95 passed by the Reviewing Authority rejecting the review petition of the applicant against the termination of his services may be quashed with all consequential benefits, and the respondents may be directed to reinstate the applicant on the post of EDBPM, Ametha with all consequential benefits including back wages.

2. The facts of the case as stated by the applicant are that respondent No.4, Senior Superintendent of Post Offices, Kota Division, Kota opened an Extra Departmental Branch Post Office at village Ametha in April, 92. The applicant was appointed as Extra Departmental Branch Post Master (EDBPM) on 25-4-92. The order of appointment was provisional for a period of 3 months. This period of provisional appointment was extended but no specific order was issued. Subsequently, by order Ann.A5 dated 16-6-93, the applicant's name was

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approved for regular appointment on the post of EDBPM.

By this order the Asstt. Supit. of Post Offices, Jhalawar was directed by respondent No.4 to complete the formalities regarding the applicant's appointment on regular basis.

However, the applicant received a copy of the Memorandum dated "12/94" issued by respondent No.4 by which the services of the applicant were terminated forthwith i.e. with effect from 13-12-94, after he had rendered service of 2 years and 8 months, without giving any reason and without calling for an explanation from the applicant or conducting an enquiry into the matter. One month's pay and allowances were paid to the applicant in lieu of notice. (Termination order Ann.A1). The applicant filed a review petition before respondent No.3, the Post Master General, Eastern Region, Ajmer, but the latter vide his order Ann.A2 dated 23-3-95 upheld the order of termination of services of the applicant. The applicant had asked for a personal hearing from the reviewing authority but it was not granted. Inspite of his repeated requests, the applicant was not communicated reasons for termination of his services. However, respondent No.4 had informed the applicant verbally that due to some adverse report services of the applicant were terminated.

3. Further, according to the applicant, his name was included in an F.I.R. lodged with the police but the matter ended with the compromise between parties and no challan was filed before the court. This instance, therefore, cannot be a valid ground for termination of services of the applicant. Respondent No.4 asked for a copy of the compromise document from the applicant for reconsidering the issue, but inspite of the fact that the said document was submitted, he was not reinstated. The applicant has assailed the action of the respondents in terminating his services as contrary to rules and illegal. After the termination of the services of the applicant, the charge of EDBPM, Ametha was handed over to the mail overseer and no regular incumbent to the said post has yet been appointed. Perusal of Ann.A8 dated 23-3-95 shows

that the respondents intend to fill-up the said post by making fresh appointment. There was never any complaint against the applicant regarding his work or conduct. The termination of services is against the provision of Article 311 of the Constitution. His services has been terminated by wrongly applying the provisions of Rule 6(b) of the Posts and Telegraphs Extra Departmental Agents (Conduct and Services) Rules, 1964, because these are not applicable to persons performing satisfactory service or for reasons connected with the conduct of the holder of the post.

4. The respondents in the reply have stated that the applicant was appointed to the post of EDBPM after his name was sponsored by the Employment Exchange alongwith the names of 8 other candidates. However, no order of regular appointment was issued as the appointment was subject to verification of character and antecedents of the applicant and this is a pre-condition for such appointment. The S.H.O., Aklera has submitted a report regarding character and antecedents of the applicant vide his letter dated 29-7-93 stating that a case under Sections 341/323/504/34 of IPC had been registered under Regn. No. 170/92 at Police Station, Aklera and chargesheet dated 31-10-92 had been submitted in the court of ACJM, Aklera which was under trial (Ann.R1). Accordingly, instructions were issued on 2-12-92 to terminate the services of the applicant. His services were terminated by order dated 7-12-94 under Rule 6(b) of the aforesaid rules. The review petition filed by the applicant was rejected by the P.M.G., Ajmer vide his letter dated 23-3-95 (Ann.A2). Further, according to the respondents, the termination of services of the applicant under the aforesaid rules was in order, as he was a temporary employee. He never sought reasons for termination of his services. By Ann.A5 dated 16-6-93, the provisional appointment of the applicant was not approved for conversion into regular appointment as alleged by the applicant. Verification of character and antecedents

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of the applicant was a pre-condition for regular appointment and this verification was not carried out before the applicant was appointed on provisional basis. It is open to the State to take into account the character and antecedents of the applicant before he is appointed to Govt. service. Since the applicant was not found fit for the above post in view of the verification report, his temporary services were terminated. No enquiry under Rule 8 of the aforesaid rules was necessary before terminating the services of the applicant. As per the terms and conditions of the applicant's temporary appointment, no opportunity of hearing was given to the applicant before such termination.

5. During the arguments, the learned counsel for the applicant stated that the services of the applicant had been terminated primarily on the ground that the police had submitted a report that the applicant had been involved in a criminal case. The matter ended in a compromise and there was no conviction, much less any sentence imposed on him. This, therefore, could not be a ground for terminating the services of the applicant. Rule 6(a) of the aforesaid rules provide for termination simplicitor of extra departmental postal agents but where the foundation of the order of termination was the conduct of the applicant, termination simplicitor was not permissible and termination could be effected, if at all, only after holding a regular enquiry against the applicant as provided in Article 311(2) of the Constitution or Rule 8 of the aforesaid rules inasmuch as the order of termination is penal in nature.

6. To support his views, he cited various judgements of the Tribunal and the Hon'ble Supreme Court which are mentioned below: i) Gopa Ram Vs Union of India, 1987 (1) SLJ (CAT) 401, wherein Jodhpur Bench of the Tribunal held that in the case of a person appointed on being duly selected, termination of his services by innocuous order on receipt of an adverse

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police verification report subsequently was not justified as the adverse report was a foundation and not the motive of the order, ii) Madan Mohan Prasad Vs State of Bihar and others, 1973 (1) SLR 630, in which the Hon'ble Supreme Court held that where termination of appointment of temporary employee was ordered in terms of appointment after the Chief Minister had made statement in the Assembly that services of the employees were not satisfactory, it amounted to casting a stigma on the employees and such an order of termination was hit by Article 311(2) of the Constitution.

iii) Babulal Vs State of Haryana and others, 1991 (1) SLJ (CAT) 221, wherein the Hon'ble Supreme Court held that in a case where termination was ordered during the pendency of criminal case which subsequently resulted in acquittal was held to be illegal and arbitrary and liable to be quashed. It was further held in this judgement, accordingly to the learned counsel for the applicant, that the order of termination was penal in nature and has civil consequences as per service rules and terms of contract. iv) Delhi Transport Corporation Vs DTC Mazdoor Congress and others, 1991(1) SLJ 56 wherein the Hon'ble Supreme Court held, inter-alia, that the management cannot have unrestricted and unqualified power of terminating the services of the employees and that contingencies and occasions for its use so as to ensure fair play must be there. v) Shamsher Singh Vs Union of India and others, 1993 (3) SLJ (CAT) 562, decided by the Principal Bench, New Delhi, wherein the Tribunal was called upon to adjudicate upon the grievance of a person who was duly selected for appointment as constable but was not offered an appointment on the ground he had been acquitted by the court on the ground of compromise and, therefore, he could be said to have been fully exonerated and was hence considered as unfit for service in Delhi Police. The Tribunal held that the compromise in the criminal

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case gives the same benefit of acquittal as is available to a accused person in a normal trial. Thus no stigma remained on the person concerned. Further, since the offences were not of moral turpitude the denial of appointment to the applicant in that case after his selection was unjust, illegal and arbitrary and, therefore, liable to be quashed. vi) Harsh Gupta Vs Rajasthan State Electricity Board and others, 1994 (5) SLR 393, wherein the Rajasthan High Court held inter-alia, that where after the selection of a person but before issue of order of appointment, a F.I.R. came to be lodged alleging commission of an offence under Section 498(A), IPC, the person cannot be denied appointment as no conviction had yet been recorded and mere registration of a case cannot be equated with a finding of guilt and also mere failure of the person concerned to disclose fact of lodging of F.I.R. cannot be made a basis to dis-entitle him of necessary relief. vii) V.Kumar and others Vs Union of India (1994) 27 ATC 346, wherein the Madras Bench of the Tribunal held that a person initially appointed as Extra Departmental Agent works directly under the department and their position is not same as that of persons appointed as substitutes. Certain directions were given in this order by the Tribunal regarding regularisation of provisional appointees. viii) Om Prakash Vs Union of India and others (1994) 27 ATC 14, wherein the Jodhpur Bench of the Tribunal held that substitute Extra Departmental Agent stands terminated when the Departmental Agent in whose place he was appointed, resigns.

7. The learned counsel for the applicant concluded by stating that there is a provision of review of cases of termination provided in instruction No.8 dated 4-5-65 issued by the Director General, P&T, reproduced below rule 6 of the aforesaid rules in the Swamy's compilation

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of these rules, 6th Edition, 1995. The applicant's review application has been rejected by Annexure-A2 summarily, without going into the grounds raised by the applicant in his review application.

8. The learned counsel for the respondents stated during the arguments that the appointment of the applicant was provisional in nature which was extended from time to time. Provisional appointment had, therefore, conferred no right on the applicant to continue in service, even though his name may have been approved for selection on a regular basis, but when no such appointment was made pending verification of his character and antecedents. The police verification report shows that the conduct of the applicant was of a questionable nature, even though the criminal case against him might had ended in a compromise. The respondents as employer of the applicant were entitled to judge the conduct of the applicant to find out whether the applicant was suitable to be appointed in the department on a regular basis. Provisions of Rule 6 of the aforesaid rules empowered the respondents to terminate the services of an employee who has not yet rendered 3 years of continuous service. Therefore, the action of the respondents in terminating the services of the applicant in terms of Rule 6 without holding an enquiry and without giving any opportunity of hearing to the applicant was fully justified.

9. We have heard the learned counsel for the parties and have gone through the material on record as also the judgements cited before us. Rule 6 of the aforesaid rules as it stands at present, reads as under:

6. Termination of Services.-(a) The services of an employee who has not already rendered more than three years' continuous service from the date of his appointment shall be liable to terminate at any time by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee;

(b) the period of such notice shall be one month:

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Provides that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his basic allowance plus Dearness Allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month.

The above offer of appointment was made to the applicant vide Ann.A4, wherein it was stated that it was not possible to make appointment of an EDBPM in a newly created post office on a regular basis and, therefore, the Sr. Supdt. Post Offices, Kota has decided to appoint the applicant for a period of 3 months or till a regular appointment is made, whichever is earlier. It was also made clear in this offer letter that the appointment is temporary and that he should understand that whenever a regular appointment is made, the applicant's temporary appointment would come to an end. From the wording of this offer, which was accepted by the applicant, and in terms of which charge was given to him vide Ann.A3 dated 25-4-92, it is clear that the applicant's appointment was provisional and was to last till the appointment of a regular incumbent. He,

Incidentally, the applicant had not even completed 3 years of service on the date on which his services were terminated.

The provisional appointment is not even on the same footing as an appointment on a temporary though regular basis. His services have been terminated by a simple order of termination Ann.A1 dated "12/94" which is an order passed under rule 6(b) of the aforesaid rules after giving him one month's pay in lieu of the notice. This rule is similar to Rule 5 of the Central Civil Services (Temporary Service) Rules in all material respects. Before the appointment of the applicant, his character and antecedents had not been verified. After his appointment, a report Ann.R1 was received from the police which showed that a criminal case had been registered against the applicant under section 641/323/504/34 IPC and that challan had also been filed.

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in the court of Additional Chief Judicial Magistrate. After seeing this report, the respondents terminated the services of the applicant. According to the applicant, there was a compromise between parties and nothing remained of the criminal case against him and, therefore, this criminal case could not be the basis for termination of his services.

10. Question, however, is whether before offering regular appointment to the person or before continuing his provisional appointment, the respondents are entitled to judge the suitability of a person to hold a particular post. The respondents are entitled to take into consideration character, antecedents and background of a person before offering him a regular appointment or continuing services on a provisional appointee. Although the criminal case against the applicant may have ended in a compromise, yet the respondents are entitled to consider the entire background of a person and decide whether they should continue the services of the applicant in view of what was stated in police verification report. Incidentally, the applicant had made false statement in the OA that no police charge sheet had been filed against him in the court inasmuch as the police verification report reveals that a charge sheet was indeed filed in the court after investigation by the police. Since the applicant was only a provisional appointee, the respondents found in view of his background, that he is unsuitable to continue to hold the post of EDBPM and they terminated his services.

11. There was no specific misconduct on the part of the applicant for which his services were terminated and, therefore, the police verification report or the registration of a criminal case or the filing of charge sheet against him in the court was neither the motive nor the foundation for termination of his services. It was the unsuitability of the applicant, in view of his background, to hold the post of EDBPM that led to the termination of his service. We have carefully considered the various judgements cited

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by the learned counsel in support of the applicant's case but we are of the view that in the peculiar facts and circumstances of the present case these have no applicability.

12. In this connection, we may also refer to an order of the Principal Bench of the Tribunal in Khazan Singh Vs Union of India and others (1993) 25 ATC 796 in which the facts were that the applicant was appointed as a Constable-Driver in Delhi Police on a temporary basis and was governed by Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965. His services were terminated under the said rule, firstly on the ground that before his appointment he has concealed the facts of his involvement in a criminal case that he was bound to disclose it in the application form before appointment and secondly he did so, even when there was a warning or caution issued to the effect that failure to disclose information or to suppress true information would render the applicant ineligible for the post. He had also been acquitted by the Magistrate, even before his appointment. What was taken into account in terminating his services was his conduct in concealing information about his prosecution. In that case he was given an opportunity to explain his conduct and it was thereafter that his services were terminated. While upholding termination of services of that applicant, the Tribunal relied upon the judgement of the Hon'ble Supreme Court in State of U.P. Vs Kaushal Kishore Shukla (1991) 16 ATC 498. Shukla case dealt with a case of a temporary Govt. servant governed by the U.P. Temporary Government Servant (Temporary Service) Rules, 1965. In paras 6, 7, 8 and 11, the Hon'ble Supreme Court had observed as follows in Shukla case judgement:

Para 6: "....Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of character roll entries or on the basis of preliminary enquiry on the allegation made against

an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination."

Para 7: "A temporary government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servants. A temporary government servant can, however, be dismissed from service by way of punishment. Whenever the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If it decides to take punitive action it may hold a formal enquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant, very often the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the court to determine the true nature of the order. In *Parshotam Lal Dhingra Vs Union of India*, a Constitution Bench of this court held that the mere use of expression like 'terminate' or 'discharge' is not conclusive and inspite of the use of such expression, the court may determine the true nature of the order to ascertain whether the action taken against the government servant is punitive in nature. The court further held that in determining the true nature of the order the court should apply two tests, namely, (i) whether the temporary government servant had a right to the post or the rank or (ii) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary government servant is by way of punishment. It must be borne in mind that a temporary government servant has no right to hold the post and termination of such a government servant does not visit him with any evil consequences. The evil consequences as held in *Parshotam Lal Dhingra* case do not include the termination of services of a temporary government servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in *Dhingra* case has been reiterated and affirmed by the Constitution Bench decision of this court in the *State of Orissa Vs Ram Narayan Das, R.C. Lacy Vs State of Bihar, Champaklal Chimanlal Shah Vs Union of India, Jagdish Mitter Vs Union of India, A.G. Benjamin Vs Union of India, Samsher Singh Vs State of Punjab*. These decisions have been discussed and followed by a three Judge Bench in *State of Punjab Vs Sukh Raj Bahadur*."

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Para 8: ".....As already observed, the respondent being a temporary government servant had no right to hold the post and the competent authority terminated his services by an innocuous order of termination without casting any stigma on him. The termination order does not indict the respondent for any misconduct. The enquiry which was held against the respondent was preliminary in nature to ascertain the respondent's suitability and continuance in service. There was no element of punitive proceedings as no charge had been framed, no enquiry officer was appointed, no finding were recorded, instead a preliminary enquiry was held and on the report of the preliminary enquiry the competent authority terminated the respondent's services by an innocuous order in accordance with the terms and conditions of his service. Mere fact that prior to the issue of order of termination, an enquiry against the respondents in regard to the allegations of unauthorised audit of Boys Fund was held does not change the nature of the order of termination into that of punishment as after the preliminary enquiry the competent authority took no steps to punish the respondent instead it exercised its power to terminate the respondent's service in accordance with the contract of service and the rules."

Para 11: ".....We have referred to the above decisions in detail to dispel any doubt about the correct position of law. It is erroneous to hold that where a preliminary enquiry into allegations against a temporary government servant is held or where a disciplinary enquiry is held but dropped or abandoned before the issue of order of termination, such order is necessarily punitive in nature."

After analysing the above observation of the Hon'ble Supreme Court, the Tribunal held in Khazan Singh case that what becomes clear on a careful reading of the judgement is that if the order of termination of a temporary government servant is made in accordance with the rules or conditions of service and does not cast any stigma, the question of giving reasonable opportunity or complying with the provisions of natural justice before passing the order does not arise. It has been clearly laid down that it is for the competent authority to decide on the facts and circumstances of the case as to whether it should exercise the power of termination in accordance with the rules governing termination of a temporary employee or to proceed to punish him for misconduct. In the instant case, the respondents have considered the question whether, in view of the character and antecedents of the applicant, the applicant was

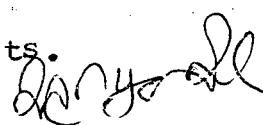
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suitable to continue to hold the post of EDBPM on a provisional basis. No fault can be found with their judgement in view of the observation of the Hon'ble Supreme Court in Shukla case and those of the New Delhi Bench of the Tribunal in Khasan Singh case.

13. As already observed above, the applicant was a provisional appointee and the respondents had taken into consideration his background while terminating his services in accordance with the rules of service governing him. No Stigma has been cast on him. The order was not punitive in nature as it was not intended to punish him for any misconduct. After going through the various judgements cited on behalf of the applicant that to show that where registration of F.I.R./adverse police report/criminal case ended in acquittal or a compromise and, therefore, these need not stand in the way of the applicant being continued on the post already held by him, we are of the view that the position in this case is different inasmuch as the applicant's initial appointment was provisional in nature and his provisional appointment has been brought to an end in view of his unsuitability to hold the post in the light of his character and antecedents.

14. In the circumstances we see no merits in this OA. It is, therefore, dismissed with no order as to costs.


(Rattan Prakash)
Member (J)


(O.P. Sharma)
Member (A)