

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER : 6-9-2001

OA 43/95

Smt. Manju Bala Joshi W/o Shri Sharad Joshi, aged around 36 years, resident of Plot No. 34, Natraj Nagar, Near Imaliwala Phatak, Jaipur. Presently posted as Welfare Officer, under Central Social Welfare Board.

.... Applicant.

Versus

The Central Social Welfare Board through its Chairman, B-12, Institutional Area, South of I.I.T., New Delhi.

.... Respondents.

Mr. R.N. Mathur, Counsel for the applicant.

Mr. P.V. Calla, Counsel for the respondents.

CORAM:

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

Hon'ble Mr. S.A.T. Rizvi, Member (Administrative)

ORDER

PER HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMINISTRATIVE)

In pursuance of an advertisement issued by the respondents, applicant applied for and succeeded in securing an appointment as Welfare Officer vide respondent's Memorandum dated 11.2.93 (Annexure A-2). She was thereby placed on probation for a period of two years. However, before the completion of the aforesaid period of probation, her services have been terminated by the respondent's office order dated 18.8.94 (Annexure A-1). Aggrieved by the aforesaid order, the applicant filed the present OA.

2. The learned counsel for the applicant has, interalia, raised the main issue of the aforesaid impugned order being stigmatic in nature and thus passed as a punitive measure. The aforesaid order, having been issued without putting the applicant to notice, is, in the circumstances, according to the learned counsel, bad in law, being violative of the principles of natural justice. For these reasons alone, the impugned order, according to him, deserves to be thrown out.

3. The learned counsel appearing in support of the respondents has on the other hand submitted that the impugned order dated 18.8.1994 is an order simplicitor and cannot be said to have been passed as a punitive measure. The applicant, according to him, had been placed on probation for a period of two years. During the said period, her performance, including her work and conduct, were required to be kept under close watch. At the end of the aforesaid period, or at any time before it, her services could be validly terminated on the basis of her performance as assessed by the respondents. The applicant, according to him, right from the start remained on leave to the extent that out of 443 days spent by her in service, she remained on leave or remained absent for as long as 397 days. The applicant thus attended the office for just 46 days before her services were terminated by the impugned order.

4. The learned counsel appearing for the respondents has further submitted that on finding that the applicant generally remained on leave, often times without prior permission, the respondents authority issued a notice to the applicant on 10.1.1994 (Annexure A-4) calling for her explanation. The aforesaid notice, according to him, is not a charge-sheet and, therefore, it cannot be argued that the respondents had started disciplinary proceedings against the applicant on the ground

of her extended unauthorised absence. In the explanation dated 22.1.1994 (Annexure A-5) submitted by her, the applicant has nowhere in so many words explained as to why she had to remain on leave even without prior sanction, for varying spells of time.

A perusal of her explanation clearly shows that she was personally unhappy with her posting in Haryana and was looking for an opportunity to get transferred to a place convenient to her. The explanation offered by her that, being a woman, she found it difficult to work in Haryana cannot be accepted. The service she had joined has all India transfer liability and, therefore, she cannot be allowed to offer explanations of the kind she had ~~had~~ given in her aforesaid letter of 22.1.1994 (Annexure A-5). The applicant was no doubt transferred to Delhi in May, 1994 and was posted there at the time her services were terminated by the impugned order. The certificate dated 30.8.1994 (Annexure A-6) placed on record by her showing that her performance in Delhi Office was good and satisfactory cannot be relied upon, according to the learned counsel, as the aforesaid certificate has obviously been obtained after her services had been terminated and for this very reason, it is not possible to attach any value to it. Further, it has already been stated that she has performed in office for just 46 days. Therefore, her services having been found to be satisfactory for as short a period as 46 days cannot be pleaded to advance the plea that the applicant was a satisfactory worker. We have also noted that there is no whisper of malafide on the respondents' part in the pleadings on record.

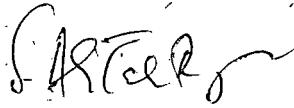
5. We have considered the various pleas taken by the learned counsel carefully and are inclined to take the view that the respondents have acted correctly and legally by passing the impugned order dated 18.8.1994 terminating the service of the applicant. The period of probation is a period of trial during which the applicant, like any other probationer, was supposed to put in her best by way of performance in all respects. By remain

ing on long spells of leave, generally without permission, the applicant has, in our view, succeeded only in convincing the respondent authority that she lacked in devotion to work and is also an unwilling worker. By seeking her transfer to a place convenient to her, in the manner she did, she has further succeeded in making the respondent authority believe that she can function satisfactorily only when posted at a place of her choice and convenience. Such an attitude by an officer with all India transfer liability can never be appreciated by the respondent employer. The evaluation of a probationer's performance is to be made by the respondent authority on the basis of his own subjective satisfaction. The Courts/Tribunals cannot replace the respondent authority for this purpose. A number of factors ordinarily go into the evaluation of the work and conduct of an officer placed on probation. Punctuality and willingness to work are matters of prime importance in this connection. The officer's capability to adjust in a typical location can also be an important factor. Similarly, an officer's keen-ness to proceed and remain on leave on this or that pretext will also obviously be a factor to be taken into account at the time of evaluation of performance. We do not know but we are sure that the respondent authority has taken the aforesaid factors as well into account before making up his mind to terminate the applicant's services. We are not inclined to dilate on this matter any more for the reason that, as stated, it falls within the realm of subjective satisfaction of the respondent authority. We cannot help observing however, that lifting of the veil from the impugned order so as to uncover the real motive has also failed to yield the ground of malafide alleged on behalf of the applicant.

6. It is settled that the services of a probationer can be terminated at any time during the period of probation or at the end of it subject to evaluation of the officer's performance from time to time. The letter of appointment issued to the applicant (Annexure A-2) itself provides that during the proba-

tionary period, her appointment could be terminated at any time on one month's notice and without assigning any reason. There can be nothing wrong if the respondents have proceeded to act in accordance with the aforesaid stipulation made in the appointment letter. It is also settled that while terminating the services of a probationer, it is also not necessary at all to assign any reason. The respondents have, therefore, committed no mistake by not assigning any reason in the impugned order dated 18.8.94 which is, by all means, an order simplicitor, and cannot be said be stigmatic in any respect.

7. For the ~~various~~ reasons mentioned in the preceding paragraphs and taking into account the observations made by us in this order, the OA is found to be devoid of any merit. The same is, in the circumstances, dismissed. The parties will bear their own costs.


(S.A.T. RIZVI)

MEMBER (A)


(S.K. AGARWAL)

MEMBER (J)