

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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O.A. No. 384/97 199
T.A. No.

DATE OF DECISION 23.11.2000

Mukesh Kumar Jain Petitioner

Mr. Mahendra Shah Advocate for the Petitioner (s)

Versus

Union of India & Anr. Respondent

Mr. K.N. Shrimai Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. N.F. Nawani, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Y/N*
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 ?

(N.P. Nawani)
Member (A).


(S.K. Agarwal)
Member (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.394/97

Date of order: 23/11/2000

Mukesh Kumar Jain, S/o Shri Mohan Lalji Jain, R/o 537, Namak ki Mandi, Kishanpol Pazar, Jaipur, Ex-Appraiser(Jewellery Export), Deptt. of Customs, Govt of India, Mumbai.

...Applicant.

Vs.

1. Union of India through the Secretary to the Govt of India, Ministry of Finance, Deptt of Revenue, New Delhi.
2. Commissioner of Customs, Personnel Section, New Customs House, Borli, Mumbai.

...Respondents

Mr. Mahendra Shah - Counsel for Applicant.

Mr. K.N. Shrimal - Counsel for respondents.

CORAM:

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

Hon'ble Mr. N.P. Nawani, Administrative Member.

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

In this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 9.1.96 (Annex.A2) by which the services of the applicant were terminated under Rule 5(1) of the CCS(Temporary Service) Rules, 1965 and the order dated 19.8.97 by which representations filed by the applicant for setting aside the order dated 9.1.96 were rejected.

2. In brief facts of the case as stated by the applicant are that after selection on the post of Appraiser by UPSC, the applicant was appointed on the post of Appraiser on 9.4.91 on probation for a period of two years and the applicant joined the duties on 27.5.91. It is stated that the applicant has successfully completed the probation period. It is further stated that a false case was registered against the applicant by CPI and after obtaining prosecution sanction, charge sheet was filed against the applicant before the Court of Sessions at Mumbai which is pending. It is stated that against the impugned order of



termination, the applicant filed representations which are Anxx.A10, A11 and A12 but these representations were rejected vide impugned order dated 19.8.97, It is stated that the services of the applicant were solely terminated on the ground that he could not qualify the departmental examination within the stipulated period of two years whereas S/Shri M.Rajan and Rakesh Ladwel, were retained in service even though they did not qualify the departmental examination within the stipulated period. It is also stated that the applicant was not appointed against a temporary post but he was appointed against a permanent post. It is also stated that the applicant qualified the written test within the period of two years but he was not called for interview under the erroneous impression that suspended employee cannot be called for interview. Therefore, it is stated that termination of the services of the applicant is penal in character, no notice of opportunity of hearing was given before issuance of such order of termination, therefore, the termination of services of the applicant is unlawful and arbitrary and liable to be set aside. Therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. It is stated by the respondents that the applicant has not passed the departmental examination within the stipulated period of two years as per the terms of the appointment. Thus the applicant has not completed the probation period successfully. It is stated that the applicant was trapped while accepting a bribe of Rs.15000/- on 5.3.93 and after obtaining prosecution sanction a charge sheet was also filed against the applicant before the Court of Sessions, Mumbai which is pending. It is stated that during the period of probation, the concerned authority assessed the suitability of the applicant but the applicant was not found suitable, therefore, the services were terminated under Rule 5(1) of COS(Temporary Service) Rules, 1965. It is stated that the status of the applicant is temporary as he was not confirmed on the post and his services were not found satisfactory, hence terminated by an order of simpliciter. It is denied

S. A. J.

that the services of the applicant were terminated solely on the ground that he could not pass the departmental examination within the stipulated period but there were complaint against him and he was trapped in a bribe case. Therefore, the services of the applicant were terminated under Rule 5(1) of the CCS(TS) Rules by the impugned order dated 9.1.96 and the applicant has no case for interference by this Tribunal. Therefore, this O.A is liable to be dismissed as having no merit.

4. Rejoinder was filed reiterating the facts stated in the O.A and specifically stated that the order of termination under Rule 5(1) of the CCS(TS) Rules, is unlawful which are not applicable in the instant case.

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

6. The learned counsel for the applicant has argued that the impugned order of termination was issued under Rule 5(1) of the CCS(TS) Rules, but provisions of this rules are not applicable in the instant case as the applicant after selection by UPSC, was appointed on probation for a period of two years and his probation was not extended. He was continued in service till the impugned order of termination was issued, therefore, status of the applicant did not remain as temporary Govt servant. In support of this contention, he has relied on:

- i) Anoop Jaiswal Vs. Govt. of India & Anr., AIR 1984 SC 636
- ii) Wasim Beg Vs. State of UP & Ors, 1999(1) SCSLJ SC 151
- iii) Chander Prakash Shahi Vs. State of UP & Ors 2000(4) Supreme Today 510
- iv) Karnataka State Transport Corp. & Anr. Vs. S. Manjunath etc. 2000(4) Supreme Today, 651.

On the other hand the learned counsel for the respondents argued that the services of the applicant were terminated as he did not pass the departmental examination, within the period of two years and he has not successfully completed the period of probation, therefore on account of unsuitability, the services of the applicant were terminated by the



impugned order, which is an order simplisitor and the Tribunal should not interfere in the impugned order of termination.

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

8. Rule 5(1) of the CCS(TS) Rules, 1965 provides as under:

"5(1)(a) The services of a temporary Govt servant shall be liable to termination at any time by a notice in writing given either by the Govt servant to the appointing authority or by the appointing authority to the Govt servant;

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

Provided that the service of any such Govt servant may be terminated forthwith and on such termination the Govt servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances 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."

9. On a perusal of this Rule, it is abundantly clear that only the services of a temporary employee can be dispensed with under Rule 5(1) of the CCS(TS) Rules.

10. The Apex Court of this country consistently delivered the judgment on status of a probationer. In Parshotam Lal Dhingra Vs. UOI, AIR 1958 SC 36, which is regarded as Magna Carta of the Indian Civil Services by the Hon'ble Supreme Court and held as under:

"An appointment to a permanent post in Govt service on probation means as in the case of a person appointed by a private employer that the servant so appointed is taken on trial. The period of probation may in some cases be for a fixed period e.g. for six months or for one year or it may be expressed simply as 'on probation' without any specification of any period. Such an employment on probation under the ordinary law of master and servant comes to an end if during or at the end of the probation

the servant so appointed on trial is found unsuitable and his service is terminated by a notice."

11. In State of Bihar Vs. Gopy Kishore Prasad, AIR 1960 SC 689, it was held by Hon'ble Sirha C.J that termination without notice but after holding an enquiry into the alleged misconduct or efficient or some similar reasons would be punitive.

12. Hon'ble Supreme Court gave a new dimension to the legal principle on the status of probationer in the State of Orissa Vs. Ram Narain Das, AIR 1961 SC 177 and held that if the purpose of enquiry is to ascertain whether the employee is fit to be confirmed and not the enquiry into the charges of misconduct, inefficiency, or negligence, the termination of a probationer is upheld.

13. In Madan Gopal Vs. State of Punjab, AIR 1963 SC 531, it was held that if the report of enquiry is about misconduct and the termination was based on such report the order of termination was punitive.

14. This theory of 'object of enquiry' was again emphasised in Jagdish Mitter Vs. UOI, AIR 1964 SC 449, Hon'ble Gajendragadkar, J, while delivering the judgment of the Apex Court held that if the enquiry was held only for the purpose of deciding whether the temporary servant would be continued or not it could not be treated as punitive.

15. In Champaklal Chimanlal Shah Vs. UOI, AIR 1964 SC 1354, it was held by Hon'ble Wanchoo, J, that the order of termination soon passed after preliminary enquiry held not punitive as the purpose of enquiry is to find out prima facie case to start with regular departmental enquiry.

16. In Shamsher Singh Vs. State of Punjab, AIR 1974 SC 2192, Seven Judges Bench of Hon'ble Supreme Court held that before the probationer was confirmed, the authority concerned was under the obligation to consider whether work of the probatciner was satisfactory or whether he was suitable for the post. It was further held in this case that if the object of enquiry was to ascertain the truth of allegations of misconduct and the enquiry officer gave his finding on allegations of misconduct the order of termination based on such recommendations in the

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report is punitive. Therefore, the order of termination of services of Sri Ishwar Chand Agrawal was held clearly by way of punishment in the facts and circumstances of this case.

17. In case of Oil & Natural Gas Company Vs. Dr. Md. S. Sikandar Ali, AIR 1980 SC 1242, it was held that probationer had no right to the service. Their lordship of Supreme Court in para 7 of the judgment observed as follows:

"It is obvious that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. The remarks in the assessment roll merely indicate the nature of the performance put in by the officer for the limited purpose of determining whether or not his probation should be extended. These remarks were not intended to cast any stigma."

18. In Anoop Jaiswal Vs. Govt of India, (1984) 1 SCC 369, Hon'ble Supreme Court held that if the real foundation for the order of discharge of the probationer was his alleged act of misconduct such an order is punitive in nature and was therefore held as bad in law if issued without following Article 311 of the Constitution of India.

19. In High Court of Judicature at Patna Vs. Pandey Madan Mohan Prasad Sinha & Ors, 1997 SCC(L&S) 1703(II) their lordship of Hon'ble Supreme Court of India was pleased to observe as follows:

"There is no obligation to communicate the adverse remarks to the petitioner before taking decision to terminate his services on the basis of the adverse material. But uncommunicated adverse material can be taken into consideration for assessment of suitability of the probationer and forming decision to terminate his services. Such consideration shows non-arbitrariness of the decision. Consideration of complaints regarding integrity, character and morality of the probationer and his alleged indulgence in drinking and gambling in taking decision to terminate his services does not show that the decision is punitive."



20. In Dipti Prakash Panerjee Vs. Satvendra Nath Bose, Hon'ble Supreme Court of India held that if findings were arrived at an enquiry as to misconduct behind the back of the officer or without a regular departmental enquiry the simple order of termination is to be treated as founded on the allegations of misconduct and will be bad but if the enquiry was not held, no finding were arrived at and the employer was not inclined to conduct enquiry, but at the same time he did not want to continue the employee against whom there were complaints it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to inquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance the allegations would be a motive and not the foundation and the simple order of termination would be valid.

21. 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 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.

22. In Chandra Prakash Sahi Vs. State of U.P & Ors, 2000 SCC(L&S) 613, 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.



23. 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 is 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.

24. Admittedly, the applicant was selected through UPSC on the post of Appraiser in the year 1991 and his services were terminated vide the impugned order dated 9.1.96, meaning thereby the applicant remained in service of the respondents for more than $4\frac{1}{2}$ years. According to the order of appointment, the applicant was initially appointed on probation for a period of 2 years but in the order of appointment, there is no mention about the extention of probation period. Therefore, it appears that after completion of probation period of 2 years, the applicant was allowed to remain in service till his services were terminated by the impugned order dated 9.1.96. Therefore, we are of the considered opinion that after serving for more than $4\frac{1}{2}$ years, the status of the applicant does not remain as temporary and if his status is not temporary then provisions of Rule 5(1) of the CCS(TS) Rules are not attracted and any order passed under this rules, is ab initio void.

25. The counsel for the applicant also argued that the applicant continued in service after successful completion of his probation period, therefore, he deemed to have been confirmed on the post and services of the applicant in such situation should not have been terminated without following the provisions of Article 311 of the Constitution. In support of his contentions, he has referred to:

- i) Samsher Singh Vs. State of Punjab & Anr. (1974) 2 SCC 831,
- ii) Paramjit Singh & Ors Vs. Ram Rakha & Ors, (1979) 3 SCC 478,
- iii) M.K. Agarwal Vs. Gurgaon Gramin Bank & Ors, 1987 (Supp) SCC 643,
- iv) Dayaram Dayal Vs. State of M.P & Anr, 1997(8) Supreme 8,

v) Deepti Prakash Panerjee Vs. Satvendra Math Bose National Centre for Basic Sciences, Calcutta, 1990(1) SCSLJ 232

vi) Chander Prakash Shahi Vs. State of UP & Ors 2000(4) Supreme Today 510

26. On the other hand, the learned counsel for the respondents has argued that the services of the applicant were terminated as he did not pass the departmental examination within the period of two years and he has not successfully completed the period of probation. A trap case was also filed against the applicant which is pending before the Session Court, Mumbai, therefore, the applicant was deemed to be ^{to be} ~~on probation~~ and he was rightly terminated by the impugned order dated 9.1.96.

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

28. In a leading case, V.P.Ahuja Vs. State of Punjab, the controversy regarding probation of a civil servant came before Hon'ble Supreme Court. In this case, the services of the appellant 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).

29. In the instant case, the applicant after selection by the UPSC was appointed in the year 1991 on probation for a period of two years. There was no mention about further extension of his probation in the order of appointment. The applicant was continued till the order of termination was issued. Nothing was communicated as adverse to the applicant. However in a trap case, the charge sheet was filed against the applicant which is pending before the Sessions Court, Mumbai. Thereafter, the order of termination under Rule 5(1) of the OCS(TS) Rules was issued. In our considered opinion the provisions of Rule 5(1) of OCS(TS) Rules are not attracted in this case and the order in question is not an order

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simplicitor but it appears to be an order stigmatic, therefore, the same is liable to be quashed.

30. We, therefore, allow the O.A and quash and set aside the order Anxx.A2 dated 9.1.96 by which the services of the applicant was terminated and order Anxx.A1 dated 19.8.97 by which the representation of the applicant was rejected and direct the respondents to reinstate the applicant in service forthwith with all consequential benefits.

31. No order as to costs.



(N.P.Nawani)

Member(A).



(S.K.Agarwal)

Member (J)