

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 5/8/04

OA 166/2003

Rajeev Kumar Singhal s/o Shri Om Prakash Singhal r/o C-125, Hari Marg,  
Malviya Nagar, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Science & Technology,  
Department of Survey of India, Faculty of Topographical Survey of Land  
Information System, New Delhi.
2. Director, Western Circle, Survey of India, Geejgarh House, Hawa Sarak,  
Civil Lines, Jaipur.

... Respondents

CORAM:

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant

... Mr.Ajay Rastogi

For the Respondents

... Mr.Vijay Singh, proxy counsel for  
Mr.Bhanwar Bagri

ORDER

PER HON'BLE MR.A.K.BHANDARI

The applicant has filed this OA praying for the following relief :

"That in view of the facts mentioned in para 4 and grounds of relief with legal provisions mentioned in para 5, it is humbly prayed that this Hon'ble Tribunal may kindly be pleased to call the entire record of the case and after examining the same be pleased to allow this OA and further pleased to quash and set aside the order impugned dated 27.3.2003 and the applicant may be allowed to continue to hold the post of Topo Trainee Type B (PTR) on which he was selected on substantive basis with all consequential benefits.

i) By further appropriate order of direction of the order impugned dated 27th March, 2003 is given effect the same be quashed and set aside and the applicant be reinstate in service with all consequential benefits.

ii) Any prejudicial order to the interest of the applicant, if passed during the pendency of the application, the same may kindly be taken on record and after examining the same be quashed and set aside."

2. Facts of the case are that the applicant responded to advertisement for the post of Tope Trainee Type B (PTR) in the year 1999 and was called for a written examination and interview held on 26.7.99 and 29.8.99 respectively. Result of these was declared on 29.4.2002 and the applicant was called to

give consent to take up the job on or before 12.5.2002 vide letter dated 29.4.2002 (Ann.A/3). Applicant submitted his consent to join and was, therefore, called to submit relevant documents and was further asked to report to Survey Institute at Hyderabad for training commencing from 12.9.2002, vide letter dated 24.8.2002 (Ann.A/4). One of the pre-conditions stipulated in this letter was passing of Stereoscopic Vision Test, which he qualified and reported for training. He was issued Identity Card etc. That while he was undergoing training, he was relieved by Director Training Institute vide letter dated 11.3.2003 directing him to report to Director Western Circle, Jaipur, which he complied on 17.3.2003. It is stated that without affording any opportunity of hearing and that treating the applicant as a temporary employee his services have been sought to be terminated under Rule 5(1) of the Rules of 1965 vide impugned order dated 27.3.2003 (Ann.A/1). It is stated that the applicant was appointed after regular process of selection which consisted of written examination and interview in 1999 and appointment order was given to him for the post of Topo Trainee Type B (PTR) in August, 2002 (two years later). The said appointment was on substantive basis due to which he could not be terminated as temporary employee and the very action of the respondents in terminating his services under Rule 5(1) of the Rules, 1965, which are meant for temporary employees, is wrong in service jurisprudence. He was also not afforded any opportunity of hearing before termination. The only reason given for termination is that during training he failed to improve his attitude towards Government working, as is evident from letter issued to him on 24.2.2003 (Ann.A/7). That applicant's father, Shri Om Prakash Singhal, met the Director, Training Institute, at Hyderabad and requested that some relaxation may be given to the applicant so that he may be in a position to complete the work as per requirement and in case he is unable to undergo training, as required, he may be transferred to other equivalent posts available like Draftsman/Store Keeper/Record Keeper etc. which is lower than the post offered to the applicant vide letter dated 29.4.2002 (Ann.A/3). It is mentioned that applicant was appointed subject to only one pre-condition of passing Sterioscopic Vision Test which he passed,

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and not performing well during training cannot be made ground for terminating the service by treating him temporary employee till he completed the training.

3. In the grounds, the impugned order has been called illegal, arbitrary and in violation of provisions of Constitution and also Rules of 1965. It is alleged that Rules of 1965 were applicable on employees who are appointed on ad hoc/urgent temporary basis in whose favour no right so far has been vested but the present applicant was appointed after regular process of selection and that in the offer of appointment pre-condition of qualifying Sterioscopic Vision Test only was stipulated for substantive appointment, which he passed. However, just because he could not complete the training, as desired by the respondents, his services could not be terminated under Rules of 1965, which are not applicable in this case. Not affording opportunity to explain, also makes it violative of principles of natural justice. That after his father met the Director, Training Institute, Hyderabad, applicant's consent was recorded that if the applicant fails to do training, as required, he is ready to join lower post of Draftsman/Store Keeper/Record Keeper but in spite of this consent the respondents without affording any opportunity passed the impugned order terminating his services outright. It is also alleged that his appointment was not subject to completing the training, therefore, the same could not be made ground for his termination under Rules of 1965. That the total period of training was two years comprising of field training of six months and theory training of 18 months. That the applicant could not satisfy Director, Training Institute, Hyderabad, while undergoing field training but he was never sent for remaining part of training meant for all selected candidates. Not affording this opportunity to the applicant and terminating his services without examination prior to completion of training is violative of the provisions of the Constitution and Rules.

4. The applicant had made prayer for interim relief and the same was granted vide order dated 25.4.2003, after hearing the parties, staying the

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operation of the impugned order, which continues to this date.

5. Respondents have filed detailed reply raising preliminary objection that applicant approached the Tribunal without exhausting the departmental channels for relief. In their version of the facts, applicant was selected for the post of Topo Trainee Type B (PTR) and offered appointment under Director Western Circle after fulfilling the conditions stipulated for the job. He reported in the above office on 5.9.2002 and was further detailed for basic training mandatory for the above trade in Survey Training Institute, Hyderabad. He was deployed for field training from 2nd week of October, 2002. That applicant was put under training for various subjects of surveying such as levelling, large scale surveys and departmental surveys of various scales. In spite of constant guidance and instructions from the Instructors he could not come upto the mark, failed to follow the instructions, showed utter negligence to all the aspects of training and between 11.9.2002 to 10.3.2003 three letters about his performance were issued viz. dated 24.12.2002 (Ann.R/7), 10.1.2003 (Ann.R/8) and 27.12.2002 (Ann.R/9). Thereafter, Director Survey Training Institute, inspected the work of applicant and communicated serious shortcomings to him by letter dated 3.2.2003 (Ann.R/10), in which it was pointed out that; levelling - field records were shabbily maintained with lot of cuttings, over writings and his theoretical knowledge and knowledge about handling of instruments was poor. About the large scale survey - records were not complete. Drawing and hand printing was poor and records were not produced in time. On departmental survey - his knowledge and method of work was found poor. Contouring was not done etc. In this letter the applicant was given one week's time to complete and rectify the records but he failed to do so satisfactorily even though special guidance was imparted to him during this period. Thereafter, his work was again inspected on 11.2.2003 by Director, Survey Training Institute, but no improvement was seen in his performance. Therefore, Director wrote another letter to him informing about his shortcomings at work as also his casual attitude to work and not following

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advice in right spirit. He was also informed that he was, therefore, not fit for employment in Survey of India and he should report back to his parent Directorate (Director, Western Circle, Jaipur), vide letter dated 13.2.2003 (Ann.R/3). On the same day, Director, Survey Training Institute, wrote a letter to Director, Western Circle, in which he communicated that applicant's performance has been found below acceptable standard and that he is unable to accept advice and has not been able to improve his performance in spite of repeated advises and is found unfit for the departmental work and is, therefore, being directed to return to parent Circle for further necessary action. Even though this decision was communicated to the applicant he overstayed in Hyderabad unauthorisedly, appeared before Director, Survey Training Institute, with his father and requested for giving one more chance to him for improvement. Both, applicant and his father, gave an undertaking in writing that in case the applicant does not improve, necessary action could be taken against him. This letter dated 24.2.2003 is cited as Ann.R/5. Taking a lenient view, the applicant was reinducted in field camp with the aim to provide him an opportunity to improve his performance, vide letter of the same day (Ann.R/13). In this letter also it was made clear that this opportunity is being given due to the undertaking referred to above and that he is given 15 days time to improve his work and attitude and if no improvement is observed, there will be no alternative but to return him to parent Directorate for further action. It was also made clear that it was the last opportunity and signatures of the applicant were obtained on an extra copy. However, even during the inspection 15 days later, Director, Survey Training Institute, found no improvement and wrote an exhaustive note to this effect and came to the conclusion that the applicant would not be able to undergo the training schedule with accepted norms of job for which he has been appointed in the department. Consequently, he was relieved vide order dated 11.3.2003 (Ann.R/14) and the same was intimated to Director, Western Circle, vide letter dated 12.3.2003 (Ann.R/15). As a consequence of this, the applicant reported in Western Circle on 17.3.2003. On the basis of above, it is concluded that applicant was not able to perform in spite of

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close guidance and supervision and repeated opportunities given to him to improve his performance and attitude towards work. The Survey of India being a National Survey and Mapping Agency, which bears the responsibility to provide suitable maps to the planners, administrators, carry out defence surveys, national and international boundary demarcations and to ensure that all resources contribute to their full measure to the progress and security of the Nation, applicant's continuation would set bad precedent in the department amongst other trainees and would also be detrimental to good work culture and discipline. In these circumstances, decision of the department in terminating the services of the applicant under CCS (Temporary Service) Rules is perfectly legitimate and legal.

6. Same facts have been elaborated in parawise reply. It is contended that the advertisement by which the post was advertised (Ann.R/1) was not for making substantive appointment as is evident from the opening sentence of document dated 15.9.99 (Ann.R/2), which says that applicant's name has been included in the panel of candidates for selection for appointment to one temporary post of Topo Trainee Type B (Planetabler) and that all appointments are made subject to fulfilment of conditions which are enumerated in it, including the vision test before candidates are sent for training to Hyderabad. That Stereoscopic Vision Test is just a physical fitness test for training and by no stretch of imagination the condition for permanent appointment for the post for which he was selected. That if he had not passed this test, he would not have sent for training and this cannot be equated with the field training which he was required to undergo and pass before being classified or made permanent. Therefore, this vision test does not confer any right for substantive appointment. That identity cards are issued for identification of the persons during training and issuance of the same also does not confer any permanency which comes only after successful completion of training. All the communications to the applicant by the Instructor and Director, Training Institute, were instructional in nature, some giving guidance, some urging to make improvement and a few pointing out

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that unless he put in his best effort during training, he could not progress further. In this context, 15 days extra time to improve was given but at the end of this period also, Director Training Institute came to the conclusion that the applicant would not be able to continue the training at the expected norms of job for which he had been appointed. Consequently, he was relieved on 11.3.2003 and intimation of the same was sent to Director, Western Circle, who had forwarded the same to the Training Institute on 12.3.2003. Therefore, contention that he was relieved by Director, Survey Training Institute, while undergoing training without giving him opportunity or hearing is incorrect. He was returned because of failure to complete the assigned task even after due opportunity given to him. References to this effect can be seen in Ann.R/3 to R/15. It is clarified that the training is of progressive nature and unless proficiency is achieved at the basics, further progress at learning advanced techniques cannot be achieved. That applicant failed to learn the basics and in spite of extra guidance and instructions and opportunities given to him, he was found unable to continue for further training. It was in this light that notice of termination (Ann.R/16) was issued. The contention that this was issued without affording him any reasonable opportunity, in these circumstances, is baseless. The question of not affording opportunity is negated also by the fact that applicant was given last chance of 15 days to improve when he appeared before Director Training Institute with his father and gave written undertaking to make efforts and improve. Applicant's plea regarding his appointment being a substantive one, is disputed by stating that as per rules of the department a person appointed in the first instance is placed in temporary status and only on completion of five years regular service he is made permanent. The same rule is applicable to the applicant. For this, attention was drawn to Circular Order No.435 (Administrative) dated 1.8.1950, corrected upto 31.3.1963, the subject of which is stated to be; "Rules relating to Recruitment and Promotion of Topographical and Map Reproduction Personnel in Division II of the Class III Service of the Survey of India". In course of deliberation over this case an objection was raised by the applicant that

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document placed as Ann.R/4 is correct only upto 31.3.1963 and that the same is not applicable in this case being out of date. With the result, the respondents submitted Ann.MA/1 through MA, which is updated upto 31.3.1983. It is also stated in the MA that these rules have not been amended thereafter. In course of arguments both documents were compared and it was found that in relation to recruitment and training no changes have been incorporated except that the subject is now stated to be; "Rules relating to Recruitment and Promotion of Topographical and Map Reproduction in Division II of Group-C service of the Survey of India". According to these instructions, trainees will be borne on temporary establishment and will be governed by CCS (Temporary Service) Rules until such time they are transferred to permanent establishment. That applicant was appointed purely on temporary basis and only subject to completion of the training of two years and subsequent to productive work he would have been eligible for permanency. In the circumstances of this case, he was not permanent and Temporary Service Rules only would apply in this case. Regarding applicant's consent for transfer to other post like Draftsman/Store Keeper/Record Keeper etc., it is stated that the applicant never gave any such consent for transferring him to other post. On the contrary, he stated that action could be taken against him in case he fails to complete the required training even after giving him further period of 15 days. To substantiate, copy of above consent is annexed as Ann.A/5. It is also clarified that the posts of Draftsman/Store Keeper/Record Keeper are not inferior to the post of Planetabler, for which he was under training, rather all the posts are equal and that applicant having been selected for the post of Topo Trainee Type B (PTR), he should have completed the required training successfully.

8. Replying to the grounds, it is stated that the whole action of the respondents is as per Rules of 1965 and cannot be considered violative of the provision of the Constitution. Since applicant was appointed purely on temporary basis and the Stereoscopic Vision Test was only a pre-requisite for deputing him for training, he having passed the same does not confer on him

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right to claim substantive appointment. It is clear that he failed to complete the required training which is based on rules in force. Therefore, he was weeded out after giving a notice of one month in compliance of the extent rules. The respondents are competent to terminate him in such circumstances and they having given him enough opportunity to improve, there has not been any violation of natural justice. The contention of alternative appointment is stated to be false as the same is neither possible within rules nor was it ~~required~~ <sup>requested</sup> for as is evident from the perusal of document Ann.R/5 or as stated in para H of brief facts of the case. Besides, the posts of Draftsman/Store Keeper/Record Keeper are equal and not inferior. The termination of service is also in order because it was after giving one month notice which is a stipulation of rules for terminating the services of personnel employees on temporary basis. Contention that he was not permitted to complete the training after which his performance should have been evaluated is disputed by stating that during first few months of field work the performance, attitude towards work, behaviour etc. were found such that his continuation in the department would have set bad precedent even to the other trainees and would have been detrimental to good work culture and discipline. When applicant could not complete initial field training, he could not have made progress on theoretical training either. Thus, the action of the respondents is perfectly legal.

9. Applicant filed detailed rejoinder and in it has tried to re-emphasise the contentions already raised in the application and two additional facts have been brought out in it, first regarding consent given by him for joining an alternative post of Draftsman/Store Keeper/Record Keeper. It is stated that in continuation of the said consent (Ann.R/5), the applicant gave a written application to the department on 26.6.2003 (Ann.A/8). Based on this, it is also stated that the applicant could not acclimatise to the changed whether conditions, fell ill during training and, therefore, could not complete the required basics and should be given another chance or he should be considered for alternative job as Draftsman/Store Keeper/Record

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Keeper. The second contention is regarding misguidance and illtreatment meted out to the applicant during field training by the Khallasis and helpers who demanded tips and when the same was not given they misguided and provided wrong informations to the applicant. In the reply to the rejoinder all the above contentions have been disputed by the respondents as the post of Topo Trainee Type B (PTR) and Draftsman/Record Keeper/Store Keeper are equivalent and not inferior and could not be given to the applicant as per rules in force. The allegation against subordinate staff is also disputed by stating that no such complaints were made in course of training nor were they ever received from other trainees who are imparted training in this Institution including personnel from other countries because the Institution is of international repute.

10. Parties were heard at length during arguments. Learned counsel for the applicant tried to explain that the appointment subsequent to written test/interview and Vision Test and based on letter of consent in which initial pay scale, place of posting were spelt out and only after obtaining the consent, appointment order was issued is by all accounts an order of substantive appointment and that applicant's services could not be terminated by application of CCS (Temporary Service) Rules. That for a person who has been appointed substantively, termination of service after giving one month notice is not good enough and that same could be done only by following the procedure prescribed for permanent employees. He however did not name the rule under which services of permanent/substantively appointed persons can be terminated. Since the action of the respondents is penal and stigmatic his services could be terminated only after holding a regular inquiry following all the principles of natural justice. He drew attention to letter dated 15.9.99 (Ann.R/2), by which consent has been called from applicant, and in the opening sentence his selection for appointment has been mentioned although it is for a temporary post but that does not make the appointment temporary because detailed procedure spread over more than two years was gone into before appointing him. In para (v) the only pre-condition mentioned is

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Vision Test, which the applicant passed. In para (vii) initial place of posting was mentioned. It is only stated in para (ix) that on successful completion of training he will be classified as Grade-IV in scale of pay of Rs.3200-4900. He also argued that applicant was not given opportunity of completing training and that evaluation should have been held after the training and not within five months of appointment. That the letters issued to him vide Ann.R/3, R/7, R/8 and R/9 as also the language of Ann.R/10 and R/11 are more in the nature of reprimand and by all accounts penal in nature and not advisory due to which they cannot be considered in the nature of guidance and that sufficient opportunity to explain has not been given to him. In fact, in the garb of these letters he has been meted out punishment without holding an inquiry which is violative of natural justice. To buttress this argument it was argued that not only aspects of training but applicant's attitude, behaviour and capabilities have been questioned and his services could not have been terminated on the basis of these factors without giving him appropriate opportunity to explain. Referring to the Rules updated upto 1983 (Ann.MA/1), attention was drawn to Rule-7 under which Planetabler and Store Keeper are shown as falling in the same category and it is stated that; "those who are incapable of becoming Air Survey Draftsmen will be trained as Planetabler and those who fail at this will be discharged unless their services are required as Draftsmen and they show promise of becoming good Draftsmen. In the latter case they will be retained for training alongwith other Draftsmen trainees if any". On the basis of this it is alleged that by terminating the services premature during training applicant's opportunity of becoming a Draftsman has been denied. Attention is also drawn to Rule-11 sub para (b), where it is stated that; "the period of training will be as laid down by Surveyer General from time to time. On joining, they will normally be allotted to a particular section and trade but this may be changed before classification if this is considered advisable in Government's interest by the Officer Incharge of the office".

11. Per contra, learned counsel for the respondents vehemently opposed the

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contention of the applicant that his termination under CCS (Temporary Service) Rules is irregular because his appointment was substantive. His contention was that all appointments in Survey of India in 'C' Category are made on temporary basis under Circular Order No.435 (Administrative) dated 1.8.1950. That the advertisement itself very clearly spelt out that the pay scale applicable to the post of Topo Trainee Type B (PTR) is Rs.3200-4900 after completion of training, which means training is a pre-condition of substantive appointment to the post. He also drew attention to letter dated 15.9.99 (Ann.R/2), in para 2(iv) of which the pay mentioned after classification is same as the one advertised in Ann.R/1 and in this para it is made clear; "on successful completion of training you will be classified as Grade-IV in the scale of Rs.3200-4900 as per normal rules". That these facts leave no doubt that permanency or substantiveness of the appointment was to come only after successful completion of training. Counsel for respondents also drew attention to Rule 6(iii), in which it is stated that; "after entertainment, trainees, will be borne on the temporary establishment and will be governed by the CCS (Temporary Service) Rules until such time as they are transferred to the permanent establishment". This also makes it clear that till completion of training appointment is temporary and application of Rule-5 of CCS (Temporary Service) Rules for termination of services of the applicant is correct. Contention that written test, interview and vision test were the only pre-conditions for appointment, is also countered by stating that these were only in the nature of screening test and that classification as Grade IV was to follow successful completion of training. When in spite of repeated guidance, instructions, opportunities to improve and a final opportunity on joint request with father, the applicant did not succeed in rising upto the mark, since training is of progressive nature in which if earlier instructions are not followed and fluency in them is not achieved, comprehension of further training is not possible, it was decided in the interest of service that his services should be terminated. In these circumstances, termination of applicant's services by giving one month notice under the relevant rules is justified. Since

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appointment was made by the Director, Western Circle, who sent him for training, the applicant was referred back to him for further necessary action and in termination of service in these circumstances there is no malice or vindictiveness.

12. Learned counsel for applicant in support of his contentions placed reliance on the decisions viz. Ramesh-K.Sharma and Anr. v. Rajasthan Civil Services and Ors. - JT 2000 (Suppl.3) SC 130, Om Prakash Goel v. The Himachal Pradesh Tourism Development Corporation Ltd., Shimla and Anr. - AIR 1991 SC 1490 and V.P.Ahuja v. State of Punjab & Ors. - (2000) 3 SCC 239. On the contrary, learned counsel for respondents placed reliance on Pavanendra Narayan Verma v. Sanjay Gandhi P.G.I. of Medical Sciences and Anr. - AIR 2002 SC 23, Commandant, 11th Battalion, A.P.Special Police (IR), Cuddapah, Cuddapah District v. B.Shankar-Naik - AIR 2003 SC 2249 and U.P.State Road Transport Corporation v. U.P.Public Service Tribunal (V) Lucknow & Anr. - 2003 LAB I.C. 1506.

13. I have given careful consideration to the facts and legal position involved in this case as also the case laws referred to by the parties. There is no dispute as far as procedure of appointment is concerned but there is disagreement whether the same was on substantive basis, as claimed by the applicant, or on temporary basis as countered by the respondents. If the appointment was on substantive basis, the applicant alleges that his termination under CCS (Temporary Service) Rules is violative of law because these rules would not apply for his termination he being a substantively appointed employee. The applicant feels that since allegations regarding lack of interest during training, attitude towards job, behaviour towards training staff and other trainees were the basis of his termination, his services could not have been terminated without detailed inquiry under the disciplinary rules and <sup>that</sup> punitive or stigmatic action against him by application of CCS (Temporary Service) Rules is wrong. Yet another plea of the applicant is that successful completion of training is a pre-condition

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for further progress, but the applicant was denied to complete such training and his services were dispensed with summarily within five months of appointment. Such action of the respondents is arbitrary and against natural justice. Lastly, during training the applicant should have been considered for alternative appointment, provision for which exists and request for it was also made, but the same was not done, which makes the respondents' action arbitrary and illegal. The respondents have disputed all the above contentions and correctly pleaded that applicant has challenged his termination under CCS (Temporary Service) Rules but has not anywhere in the pleading shown under which rules his services should have been terminated because it is accepted by both the parties that the applicant was making no progress at training during five months while at Training Institute at Hyderabad. It is seen that in the advertisement (Ann.R/1) the substantive pay shown for Topo Trainee Type B (PTR) is Rs.3200-4900 after completion of training, which makes it abundantly clear that successful completion of training was a pre-condition for appointment to the advertised job. This becomes crystal clear from sub para (ix) of para-2 of letter dated 15.9.99 (Ann.R/2) which reads; on successful completion of training you will be classified as Grade-IV in scale of pay Rs.3200-4900 as per normal rules, and as per Rule-7 of Circular dated 1.8.1950 initially all candidates are recruited for training. The written test, interview and vision test are, therefore, pre-condition for appointment for training and, therefore, applicant's argument is not good enough to establish that he was substantively appointed. Rule-6(iii) of the above Circular clearly states that after entertainment, trainees will be borne on the temporary establishment and will be governed by the CCS (Temporary Service) Rules until such time they are transferred to permanent establishment. In these circumstances, application of CCS (Temporary Service) Rules in this case is valid. Applicant's contention that before termination the applicant was not given adequate opportunity is also not convincing. It is very clear from the pleadings that repeated guidance and opportunity to improve and to take greater interest towards training were given and at every stage he was given

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suggestion about how he could improve his performance, senior Instructors including Director of the Training Institute personally got involved in it with the sole aim of bringing the trainee around to achieve the level of proficiency at which other trainees were progressing. The Director personally examined his performance twice pinpointing the area of work in which more attention was to be paid by him but all this was of no avail. Since the training is progressive, in other words, if the preliminaries are not understood, subsequent <sup>subjects</sup> ~~stages~~ of training cannot be understood by the trainee, therefore, when in five months the trainee failed to reach satisfactory level on the preliminaries, it was correctly concluded that he will not be able to make further progress because subjects were progressively getting more complicated. Giving of all these opportunities and minute to minute guidance and further instructions would show that the applicant was given ample opportunity. Therefore, the allegation of not giving opportunity is not sustained. In course of five months, it was realised that applicant was not making adequate progress due to lack of aptitude and his lack of interest towards training. His behaviour towards Instructors and fellow trainees was also found to be unsatisfactory. Mentioning these attributes in the communications does not make the matter penal or stigmatic. Besides, during training such reasons are relevant and sufficient for terminating service during training. This has been held in the case of Commandant, 11th Battalion, A.P. Special Police (IR), Cuddapah, Cuddapah District (supra). Similarly, in Pavanendra Narayan Verma (supra) it was held by Hon'ble Supreme Court that termination of probationer's appointment for unsatisfactory work and conduct during training, conclusion about which is arrived after some enquiry does not make the termination stigmatic. Similar conclusion was arrived at in U.P. State Road Transport Corporation (supra). Therefore, applicant's plea that respondents' action is penal and stigmatic, and procedure of regular departmental inquiry should have been adopted is not correct. On the other hand, facts of this OA are distinguishable from the facts of Om Prakash Goel (supra), cited by the counsel for applicant, in which charge sheet was framed, enquiry conducted, however before conclusion

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of enquiry and without reference to charges, simple order of termination was passed, on the basis of which it was held that form of termination order was merely a cloak for order of punishment, and such an order was set aside. Thus, this case cited by counsel for applicant, does not help him. Similar is position with regard to case V.P.Ahuja (supra), which also does not pertain to probation in terms of training successful completion of which is precondition for <sup>granting</sup> permanent status. Yet another case cited by the applicant's counsel i.e. Ramesh K.Sharma & Anr. (supra) is to strengthen his contention that if an incumbent is appointed after due process of selection either to a temporary post or permanent post and such appointment not being either stop-gap or fortituous could be held to be on substantive basis. That expression 'substantive basis' is used in service jurisprudence in contradiction to adhoc purely stop-gap or fortituous. Since the applicant was appointed after due process of selection, he was appointed substantively and in this capacity his services could not be terminated on the basis of CCS (Temporary Service) Rules which are meant for those appointed on temporary basis. This contention however is not relevant in this case because as per extant rules vide Circular No.435 (Administrative) dated 1.8.1950 the applicant was appointed for training and vide Rule-6(iii) he was borne on the temporary establishment and governed by CCS (Temporary Service) Rules until such time he was transferred to permanent establishment. When there is a specific rule making an appointment temporary, the general principle of service jurisprudence, as quoted above, could not be applied. The last issue to be determined is whether within the framework of rules alternative job suggested by applicant could be given to him. Firstly, no request for the same in writing was made by the applicant even though this has been claimed to have been made through Ann.R/5 and Ann.A/7, as referred in para-H of the application. Even though this has been pleaded in the rejoinder and cited in Ann.A/8 dated 26.6.2003 but this is an afterthought as the same was written much after the termination. However, alternative appointment as Draftsman/Store Keeper/Record Keeper could not be given within the existing rules as these posts <sup>are</sup> equal and not inferior to Topo Trainee Type B (PTR)

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appoitment and successfully completing the training is a precondition for both, but the applicant was considered not fit to complete training, and his services were terminated.

14. In view of the above, the OA is dismissed with no order as to costs.

  
(A.K.BHANDARI)

MEMBER (A)