

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.806/03

Gwalior, this the 13th day of October, 2004.

CORAM

Gwalior, Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

Shri Balwan Singh
S/o Shri Bhagwan Singh
R/o 83/3, Follower Lane,
Gora Bazar, Jabalpur.

Applicant

(By advocate Ku.P.L.Shrivastava)

Versus

1. Union of India through
its Secretary
Ministry of Defence
New Delhi.
2. Commander, Military Hospital
Jabalpur.
3. Brigadier, D.D.M.S.
Madhya Bharat Area (Medical)
Jabalpur.

Respondents.

(By advocate None)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant seeks to quash the impugned order of termination Annexure A4 dated 8.5.03 and to reinstate him in service with back wages.

2. The brief facts of the case, according to the applicant, are that the applicant was initially appointed as Safaiwala in Military Hospital, Saugor and posted at Jabalpur on probation for a period of 2 years vide order dated 28.4.99 (Annexure A1). The applicant's probation period was extended for a period of 6 months vide order dated 25.8.02 (Annexure A2) and he completed the probation period satisfactorily. Due to personal vengeance and with malafide intention, a show cause notice was issued to the applicant vide order dated 29.4.03 for unauthorised



absence. The applicant submitted a detailed reply. without conducting a departmental enquiry, impugned order dated 8.5.03 (Annexure A4) was passed terminating the services of the applicant. The said order is against the principles of natural justice as it is passed in violation of rules and procedures prescribed for conducting departmental enquiry. No opportunity of hearing was given to the applicant for defending his case. The termination order is punitive in nature and stigmatic, hence it is liable to be quashed and set aside. Therefore the applicant has filed this OA.

4. Heard learned counsel for applicant. None is present on behalf of the respondents. Hence the OA is disposed of by invoking the provision of Rule 16 of the CAT(Procedure) Rules 1987.

5. Learned counsel of the applicant argued that the probation period of the applicant was extended for a period of 6 months, i.e. upto 10th Nov.2002 vide order dated 25.8.02 (Annexure A2). The applicant hardly availed 1 or 2 days' leave on reasonable grounds but the respondents terminated his services without affording an opportunity of hearing and without conducting any departmental enquiry and, therefore, the impugned order dated 8.5.03 is against rule and law and also against the principles of natural justice.

6. The respondents have filed a reply statement resisting the claim of the applicant. It is contended that the applicant was given an opportunity to improve his working style and he was given the extended period of 6 months of probation to improve himself but he failed to do so and vide letter dated 21.12.2001 a warning was also given to him. The service tenure of the applicant was not satisfactory and there has been recommendation for



termination of his services. The applicant's services were terminated after giving him due opportunity, in as much as many warnings were given to him to improve but he failed to do so and further failed to give any satisfactory reply to the show cause notice and after taking into consideration the entire service record, the services were terminated. The respondents have not committed any irregularity or illegality in any way in passing the impugned order.

7. After hearing the learned counsel of the applicant and careful perusal of the records, we find that the applicant was initially appointed vide order dated 28.4.99 (Annexure A1), in which the period of probation was mentioned as 2 years. Subsequently it was extended for 6 months more, i.e. upto 10.11.02 vide order dated 25.8.02 (Annexure A2), but in Annexure A4 dated 8th May, 2003, i.e. the impugned order, it is mentioned that "on the verification of your records during the last four years which includes extended period of probation upto 9th May 2003, you have not performed the duties satisfactorily and in view of your frequent absence without leave, recommendation of Comdt. MH Jabalpur and the rules on the subject, I hereby terminate your service with immediate effect". The respondents could not explain about extended the period of probation upto 9th May 2003 by any letter of the respondents, while the applicant has produced Annexure A2 letter dated 26th Aug. 02 in which the period of probation was extended for 6 months upto 10th Nov. 02. Hence the contention of the respondents,



as is mentioned in the impugned order dated 8.5.03, cannot be accepted that the probation period was extended upto 9th May 2003 and his service was terminated during the probation period. It was extended upto 10th Nov.02 only. We have perused the show cause notice dated 29.4.03 (Annexure A3) in which it is shown that the applicant has mostly taken leave for one or two days. Lastly he had taken some more leave but it seems to be not sufficient ground to terminate the service of the applicant after completion of the probation period. The impugned order is stigmatic, as it is mentioned in that the applicant did not perform his duties satisfactorily and in view of his frequent absence without leave, his services are terminated. The respondents should have given due opportunity of hearing to the applicant. As the services of the applicant were terminated after completion of the probation period, the respondents should have followed proper procedure for termination after conducting departmental enquiry. The respondents have not at all followed the procedure. We have perused 1993 (4) SLR D.K.Yadav V.J.M.A. Industries Ltd (S.C.) 126 decided on 7th May 1993 in which it is held that "Constitution of India, Article 14-Natural justice-Order of termination-Civil consequences-Held that a fair play required that a reasonable opportunity was given to the employee to put forth his case and proper enquiry was held before terminating the services." In another judgement passed by the Hon'ble Supreme Court in 1993 (23) ATC 322 Union of India Vs.K.V.Janaki Raman & ors. it is held; "Pay-No work, no pay, - Rule of, inapplicable where employee, though willing, is not allowed to work without his fault-Fundamental Rules, Rule 17 (i)"

(P)

8. After considering all the facts and circumstances of the case, we are of the considered view that the OA is liable to succeed. Hence the OA is allowed. Impugned order dated 8.5.03 (Annexure A4) is quashed and set aside and the respondents are directed to reinstate the applicant in service forthwith. The applicant is also entitled for back wages from the date of termination till the date of his reinstatement. No order as to costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

पूर्वांकन से ओ/न्या.....जयलालपुर, दि.....
प्रतिलिपि अन्ते दिग्दिन:--

(1) सचिव, प्रदेश व्यापार व वार एवं दुर्गम, जयलालपुर
(2) अधिकारी श्री/क्रीमी/इ.....के कार्रवाल
(3) प्रकरणी श्री/क्रीमी/इ.....के कार्रवाल
(4) व्यापाल, देवगढ़, जयलालपुर व्यापारी
सूचना एवं आवश्यक कार्रवाही हेतु

उप रजिस्ट्रार

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