

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

original Application 917 of 2000

Jabalpur, this the 14th day of August, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Ombati Bai Baheliya,
Wife of Late Shri Ram Prasad,
Resident of House No.136,
Lalmati, Siddh Baba, Police
Station Ghampur, Jabalpur M.P.

APPLICANT

(By Advocate - Shri Bhoop Singh)

VERSUS

1. The Chairman, Ministry of Defence, Union of India, Ordnance Factory Board, S.K. Bose Marg, Calcutta, Pin - 700 001.
2. The Gun Carriage Factory, Jabalpur through its General Manager, Jabalpur M.P.
3. Mr. Shiv Kumar, Works Manager, (Admin-II) G.C. F. Jabalpur

RESPONDENTS

(By Advocate - Shri P. Shankaran)

O R D E R

By J.K. Kaushik, Judicial Member -

Ombati Bai Baheliya is aggrieved with the order dated 31.08.2000 by which her services have been terminated and she has further prayed that the respondents be directed to allow the applicant to continue in the post of Unskilled Labour and also pay her the regular salary.

2. The material facts leading to filing of this Original Application are at a very narrow compass. Her case is that her husband Shri Ram Prasad Baheliya was a permanent employee of Gun Carriage Factory. Shri Ram Prasad Baheliya went to attend his duties on 16.10.1997 and he was ordered to go outside the factory for some factory work and met with an accident during

the service and subsequently as an injury sustained by him in the accident he expired on 22.10.1997. Thereafter the applicant applied for appointment on compassionate ground. She came to be appointed on the post of Unskilled Labour vide order dated 27.01.1999 (Annexure A-3).

3. The further case of the applicant is that the applicant submitted a letter to the respondent No. 2 and asked as to what was the reason of the death of her husband. The respondents expressed their in-ability regarding the accident. Thereafter a complaint was launched by her to the concerned Police Station. A complaint was also launched to the Superintendent of Police for conducting the enquiry. On this the applicant was called by the Manager, Administration and she was pressurised to sign the written papers/letters under due-res and she signed the same under the fear of termination of her services. The same was informed to the General Manager. She also reported the matter to the higher authorities and thereafter a notice dated 17.08.2000 (Annexure A-9) came to be originated. She replied the notice and her services were ordered to be terminated vide letter dated 31.08.2000 (Annexure A-11).

4. The Original Application has been filed on number of grounds e.g. she was appointed to the post on compassionate ground on regular basis, there was no complaint or allegation against the applicant and she only requested for disclosing of the reasons of the death of her husband. The action of the respondents are totally illegal, arbitrary and contrary to law and she is the only bread-winner of the family of the deceased etc.

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5. The respondents have contested the case and have filed a detailed reply to the Original Application. They have entirely averred that the applicant submitted a complaint which was dismissed by the learned Judicial Magistrate First Class vide order dated 15.05.2000 (Annexure R-2) and it was confirmed that the applicant before and after joining service has committed criminal offences under Section 120-B of Indian Penal Code. The appointment of the applicant to Government found to be based on service was / fraud, falsehood and criminal misconduct. She was on probation and after issuance of the show cause notices her services has been terminated during the probationary period. The so called reply is a fabricated document which is not yet received by the respondents. Her termination has been done as per the terms and conditions mentioned in the appointment letter. They have also submitted that the reasons of death of her husband was very well known to her. The termination of services of the applicant was very much in order and as per the terms of the appointment.

6. A very detailed and exhaustive rejoinder has been filed controverting the averments made in the reply to the Original Application. The same is followed by a reply on behalf of the respondents to the rejoinder. The applicant has also filed a very detailed ^{additional} rejoinder in this case.

7. We have heard the learned counsel for the parties at a considerable length and have anxiously considered the pleadings and the records of this case.

8. The learned counsel for the applicant has reiterated the pleadings submitted on behalf of the applicant. It has been specifically submitted that the reply to the notice was

submitted vide Annexure A-10 in the office of the respondents and the same has been duly acknowledged and it is wrong to say that the reply was not given to the show cause notice. The learned counsel for the applicant has nextly submitted that a perusal of the impugned order of termination Annexure A-11 would reveal that the same is a stagmatic order and the applicant has not been terminated from the service for the reason of unsatisfactory working but her termination has been made on certain allegations relating to the Police enquiry in the death of her husband. It has also been specifically mentioned in the said order that there is a lack of integrity. The conjoint reading of the said order shows that the alleged misconduct is the foundation of the order and not a motive for the termination. He has also submitted that there has been absolutely no complaint regarding the working of the applicant and she is working on the post of Unskilled Labour and her appointment was made on compassionate ground which is supposed to be on regular basis but for the reasons best known to the authorities her appointment ^{on the post} was said to be on probation. However there was a specific condition which was applicable to her in her appointment letter that if the applicant does not look after the dependent family members of the deceased Government servant her services could be terminated. But there is no such complaint. Therefore her termination is not sustainable in the eye of law. In support of his contention the learned counsel for the applicant has referred to the judgments in the case of V.P. Ahuja Versus State of Punjab & Ors. reported in 2000(2) Supreme 259, Chandra Prakash Shahi Versus State of U.P. & Ors. reported in 2000(4) Supreme 510 and Dipti Prakash Banerjee Versus Satyendra Nath Bose National Centre for Basic Sciences,

Calcutta & Ors. reported in 1999(2) Supreme 34. By placing the reliance on these judgments the learned counsel for the applicant has submitted that even if the applicant was a probationer she is entitled to certain protection and her services cannot be terminated in arbitrary manner. In the present case her services have been terminated which is a major penalty and the impugned order is *ex facie* punitive and is not an order passed *simpliciter*.

9. On the contrary the learned counsel for the respondents have controverted the submissions made on behalf of the applicant. It has been submitted that the services of the applicant has been terminated in accordance with the terms of her appointment and the conditions mentioned in the appointment letter which was very much acceptable to her. Her termination has become essential because she made complaint to the police authorities and the police authorities were misled and her integrity was doubtful as indicated in the termination of the impugned order. The allegations against her are only motive and not the foundation of the order. Therefore the judgments relied upon by the learned counsel for the applicant are not relevant to the controversy involved in the present case. There is no infirmity or propriety in the action of the respondents, and the Original Application deserves to be dismissed.

10. We have considered the rival contentions raised on behalf of the parties. To appreciate the controversy involved in this case the contents of the termination order are extracted as under :

"श्रीमती ओमवती बाई, व्यवितागत संख्या 16085 टी स 121/बी आर स्त अनुमान, श्रमिक अंगूष्ठा, तोप गाड़ी निर्माणी जबलपुर की परिषिक्षा अवधि के दौरान साठ-गाठ कर फैक्टरी से धोखाधड़ी करने की नियत से पुलिस को गुमराह करना, प्रशासन पर मिथ्या दोषारोपण करना - सत्यनिष्ठा की कमी होने के कारण उनकी तेवर्दि दिनांक 31/08/2000 से तमाप्त की जाती है।"

The perusal of the aforesaid reveal that the applicant has been terminated for the reason that she has misled the Police with an attempt to commit fraud, she has said to have made certain false allegations on the administration and her integrity is doubtful. The termination letter only indicates that this all has been done during the probation period. We find that the termination of the applicant is not the termination simplicitor. The alleged reasons constituted a misconduct. Therefore in our ^{considered} opinion the impugned termination order is a stigmatic order which amounts to imposition of the penalty and the very misconduct is the foundation of the order. Admittedly the procedure established by the law for imposition of the penalty has not been followed in the present case. Therefore the impugned order cannot be sustained in the eye of law and the aforesaid judgments which have been relied upon by the learned counsel for the applicant definitely support and countenance his contentions. There are unanimity of decisions of the various courts including the Supreme Court that if the foundation of the termination is a misconduct even the probationer or a temporary Government servant gets some protection and such order would be void and inoperative in case the same has been passed without following the procedure established by the law for imposition of the penalty. Thus the main ground put forward by the learned counsel for the applicant that the ^{termination} impugned order is stigmatic is well founded and has substance. On the other hand we

are unable to agree to the contention of the learned counsel for the respondents that the impugned order is not stagmatic order and the services of the applicant has been simpliciter terminated in accordance with her terms of appointment during the probation period.

11. In the premises the Original Application merits acceptance and the same is hereby allowed. The impugned order dated 31.08.2000 (Annexure A-11) is hereby quashed and the applicant shall be entitled to all the consequential benefits. This order shall be complied with within a period of one month from the date of receipt of copy of this order. However this order shall not preclude the competent authority to take any action into the alleged misconduct against the applicant in accordance with the law. In the facts and circumstances of this case we make no order as to costs.

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member

J.K. Kaushik
(J.K. Kaushik)
Judicial Member

"SA"

पृष्ठांकन सं अंग/न्या..... जवलपुर, दि.....
पत्रिलिपि अंगे डिट:-
(1) सचिव, उच्च अधिकारी वार एसोसिएशन, जवलपुर
(2) वारेसेन श्री/अधिकारी/एवं देवतारक्त
(3) प्रबन्ध श्री/अधिकारी/एवं देवतारक्त
(4) विवरण, दोस्रा, जवलपुर, उत्तर प्रदेश
सूचना एवं आवश्यक कार्यालयी हेतु

R. Bhatt - Singh
P. Shankar Singh

Bil
अप्प रजिस्ट्रर
(18-8-03)

Issued
18.8.03
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