

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
JABALPUR

O.A.No.424/2000

Hon'ble Sh. Sarveshwar Jha, Member (A)
Hon'ble Sh. G. Shanthappa, Member (J)

Jabalpur, this the 7th day of November, 2003

Trilek Singh
s/o Shri Mangal Singh
Naka Chandra Badani
Behind Medical College
Laskar
Gwalior.

... Applicant

(By Advocate: Sh. S.K. Nagpal)

Versus

1. Union of India through
The Comptroller & Auditor General
Bahadur Shah Zafar Marg
New Delhi.
2. Accountant General (A&E)-1
Madhya Pradesh
Gwalior.
3. The Accountant General (Admn.)
Office of Accountant General (A&E)-1
Madhya Pradesh
Gwalior.

... Respondents

(By Advocate: Sh. S. Sharma, through Shri B. Dasilva)

ORDER

By G. Shanthappa, Member (J):

The above application is filed seeking the following reliefs:

"The applicant most humbly prays that the impugned notice dated 29.4.2000 (Annexure A/1) for termination of services of the applicant be stayed by this Hon'ble Tribunal during the pendency of the application."

2. The case of the applicant is that he was initially appointed as Chowkidar vide order dated 29.6.1988, and he was called for interview for the post of Staff Car Driver (Tempo) vide letter dated 24.6.1988, and he was

Contd.....2/-



selected for the said post of Staff Car Driver vide letter dated 5.7.1988. He was appointed under the scale of Rs.950-1400/- w.e.f. 5.7.1988.

3. There were some charges against him, he was censured by the order dated 2.8.1991 by reducing the pay vide order dated 17.3.1993 and penalty of reduction in pay from Rs.3500 to Rs.3000/- for three years with cumulative effect for unauthorised absence on 1.5.1997 to 1.7.1997. At the time of appointment, he was appointed on probation for a period of two years from the date of his joining. The period of probation was expired on 4.7.1990, however the said period of probation was extended upto 4.7.1993, and there was no further extension. of probation from 4.7.1993. The applicant was sent on deputation to work as Staff Car Driver in the Office of Accountant General (Accounts)-1. He joined in the said post on 4.1.2000 and he was relieved w.e.f. 19.4.2000 by the said office with direction to report his parent office. Accordingly, the applicant came back to his parent office of the AG(Accounts & Audit). The applicant joined the office at Gwalior and he has been served with the impugned notice dated 24.4.2000, informing that his services will stand terminated on expiry of one month from the date of the notice. Subsequently, the applicant has submitted his representation dated 2.5.2000 as per Annexure A-9 against the aforesaid notice of termination but he has not received any reply.

4. Per contra the respondents have filed the reply denying the allegations and averments made in the application. They have submitted in their reply that the applicant was appointed on the post of

Driver as a temporary Staff Car Driver (Tempo), on a probation of two years subject to extension by the competent authority till the successful completion of the probation period. It is also stated that disciplinary proceedings were initiated under Rule 14 of the CCS (CCA) Rules, 1965 and a charge-sheet issued on 16.7.1990. Under the said proceedings, the applicant was found proved, the disciplinary authority took a view while imposing penalty of censure. Since various disciplinary proceedings were pending against him, the probation period was extended upto 4.7.93. Again the applicant was charge-sheeted on 16.9.1997 under Rule 14 of the CCS (CCA) Rules, 1965

~~charge-sheeted on 16.7.1990 under the said proceedings~~
~~the applicant was found proved~~ for which a penalty of reduction of pay for three years was imposed vide order dated 3.12.1998 and further in another case of violation of Rule 18 of Conduct Rules, the applicant was chargesheeted on 17.8.1999 under Rule 16 of CCS (CCA) Rules, 1965 and penalty of censure was imposed. The respondents have served the written order as per Annexure R-1 wherein it has been written that "Shrimanji Staff Car Ki Duty Karengay".
The applicant ^{was} directed to drive Office Tempo but he remained reluctant and submitted in writing again in July, 1997 that he may be deployed to drive the Staff Car (Annexure R-2).

5. The legal points urged by the respondents are that the order of termination was issued under Rule 5(1) of CCS (Temporary Service) Rules, 1965 by the competent authority. The services of the applicant are required no longer hence, he has ~~not~~ ^{not} been terminated as a measure of punishment as alleged. The respondents have relied on the

Judgement of the Hon'ble Supreme Court in State of Punjab Vs. Baldev Singh ^{KHOSLA} 1996(9) SCC 190 that on expiry of probation period, it cannot be deemed to have been confirmed automatically unless confirmation order is ~~issued~~ issued.

6. The respondents have further submitted that the services of the applicant being of temporary service status, he has been terminated by giving him by ~~the~~ prescribed notice under the CCS (TS) Rules. Hence, the applicant has no legal right to challenge the impugned order of termination. The respondents have considered the representation dated 2.5.2000 and passed the impugned order by the competent authority on 11.5.2000 vide Annexure R-4.

7. The applicant has not challenged the said impugned order at Annexure R-4. Hence, the relief of the applicant shall not be considered and they have requested for rejection of the application.

8. Applicant has filed the rejoinder to the reply. In his rejoinder, he has not come with any specific contrary ~~statements~~ statements in pursuance to the reply. However, the applicant has relied on the Judgement of the Hon'ble Supreme Court in CA No.1965/2000 decided on 6.3.2000 in V.P.Ahuja v. State of Punjab reported in 2000(3) SCC 239, wherein the Hon'ble Supreme Court has held that a probationer like temporary servant is also entitled to certain protection and his services cannot be terminated arbitrarily nor in punitive manner without complying with the principles of natural justice. On the same basis, he has also relied on the Judgement of this Tribunal in TA No.59/86 decided on 28.3.1989 reported in 1989(11) ATC 340 in the case of Nathu Ram v. Union of India. In which

this Tribunal has held that the CCS (TS) Rules, 1965 are not to be interpreted in the manner the respondents are interpreting. These do not confer any ~~xxx~~ authority to terminate the services of temporary employee at any stage of service whatsoever by simply giving one month's notice if there are specific grounds of dereliction of duties and unsatisfactory performance of conduct. The action of the respondents are violative of the provisions of Article 311(2) of Constitution of India. Since the applicant put 11 years of service, he has been terminated under illegal order only on the ground that vindictive attitude of the respondents.

9. After perusal of the pleadings and the documents on record and also after hearing on both sides, we have decided the case on merit.

10. The initial appointment of the applicant is under CCS(TS) Rules, 1965 on certain conditions. One of the conditions ~~are~~ ^{is} is that he may be terminated with effect from the date of expiry of the period of one month from the date of the charge framed against him, ~~and~~ ^{if} the charges are proved, the respondents have taken decision for terminating the services of the applicant, since he was not ~~for~~ a permanent employee under the respondents.

11. The applicant has no legal right to challenge the impugned order though he ~~was not a permanent employee~~ put in 11 years of service. Since the services are under probation, the probation period was extended from time to time, it is a admitted fact that the service of the applicant was not confirmed on regular basis. The

respondents have got right to exercise their powers under Rule 5(1) of CCS (TS) Rules, 1965.

Accordingly, the impugned order (Annexure A-1) dated 24.4.2000 was ~~filed~~ passed.

12. The decisions submitted by the applicant is not applicable to the facts of the case. The learned counsel submitted that there is a stigma attached to the impugned order of termination. Hence, the Tribunal shall exercise the powers and quashed the impugned order of termination.

13. The respondents have in their reply statement and also in their arguments submitted that they have given ample opportunity to the applicant to improve his conduct on number of occasions and they have shown lenient view and the order of punishment of censure was passed. Admittedly the applicant has not challenged the order dated 11.5.2000 which was issued in pursuance to the representations submitted by the applicant. The above application is filed only on the basis of ~~order of~~ notice of termination, hence, application shall not be entertained since he has not challenged the order of termination dated 11.5.2000 (Annexure R-4).

14. Applicant has also relied on the judgement submitted along with rejoinder. ~~These~~ judgements are also not applicable to the facts of the case.

15. Recently, Hon'ble Supreme Court has rendered the Judgment in Union of India & others v. A.P.Bajpai and Others, 2003 SSC (L&S) 182 in which it has been held as under:

"5. "It is not in dispute that the appointment of Respondent No.1 was temporary and his services could be terminated under sub-rule(1) of Rule 5 of the Rules. The order of termination of Respondent 1 by its own terms was termination simpliciter. The Tribunal in the impugned order relied on the statements made by the appellants in their counter-affidavit to support the order of termination of service, annexing Annexure C-3. There was no other material or circumstances before the Tribunal to take a view that the order of termination was not simpliciter and that any stigma was attached to Respondent No.1 in terminating his services. Thid Court in State of U.P. v.

Kaushal Kisore Shukla dealing with the case of termination of service of a temporary employee in terms of contract as well as under the relevant rules applicable to temporary government servant held that the allegations made against the temporary government servant in the counter-affidavit by way of defence filed on behalf of the appellants did not change the nature and character of the order of termination."

7. The grounds stated in the counter-affidavit filed by the appellants in answer to the challenge made by Respondent 1 in the OA before the Tribunal were only the basis to assess the unsuitability of Respondent 1 to continue in the sensitive post for which he was appointed. It may be added that Annexure C-3 on which the Tribunal heavily relied to say that the impugned order was stigmatic, was an annexure to the counter-affidavit filed by the appellants. It was a confidential letter written by the Assistant Director of the Department. In our view, the Tribunal committed a serious error in law and on facts of the present case in concluding that the order of termination of services of Respondent 1 involved stigma attached to Respondent 1. The grounds stated in the counter-affidavit in answer to the challenge made by Respondent 1 were the factors to assess the suitability or otherwise of Respondent 1 to continue in service. Having regard to all relevant aspects, the authorities reached a conclusion that Respondent 1 was not suitable to continue in service. The order of termination of his services was simpliciter without attaching any stigma to the conduct of Respondent 1."

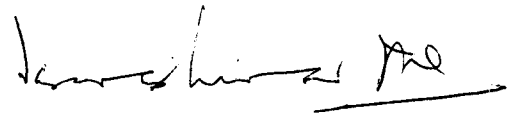
Contd....8/-



16. In view of the above law laid down by the Hon'ble Supreme Court, the applicant has no legal right to continue in the service. The powers exercised by the Respondents under Rule 5(1) of CCS (TS) Rules, 1965 are in order, we are reluctant to interfere with the orders of the respondents.

17. The applicant has not made out any case for grant of reliefs as prayed in the OA. Accordingly, the OA is dismissed. No order as to costs.


(G. SHANTHAPPA)
MEMBER(J)

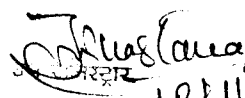

(SARVERSHWAR JHA)
MEMBER(A)

/rao/

Received
12-11

प्रमाणित किया जाता है कि
यह प्रमाणित किया जाता है कि
(1) प्रमाणित किया जाता है कि
(2) प्रमाणित किया जाता है कि
(3) प्रमाणित किया जाता है कि
(4) प्रमाणित किया जाता है कि
(5) प्रमाणित किया जाता है कि

SK Nagpal, Adv.
SC Sharma, Adv.


12/11/03