

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

ORIGINAL APPLICATION NO.801 of 1999

Jabalpur, this the 10th day of April, 2003.

Hon'ble Mr.R.K.Upadhyaya, Member (Admnv.)
Hon'ble Mr.A.K.Bhatnagar, Member (Judicial)

Gladwin Masih S/o late Shri C.Masih,
aged about 23 years, Durban (Under
order of Termination), Security Office,
Gun Carriage Factory, Jabalpur.
R/o Quarter No.2/19, Type-I, Goa Lane,
GCF Estate, Jabalpur (MP)

-APPLICANT

(By Advocate- Mr.Manoj Sharma)

Versus

1. Union of India through
Secretary, Ministry of Defence,
New Delhi.
2. Ordnance Factory Board,
through its Chairman, 10-A,
Shaheed K.R.Bose Road, Calcutta-1.
3. The General Manager,
Gun Carriage Factory, Jabalpur (MP)
4. The Estate Officer,
Gun Carriage Factory Estate
Jabalpur (MP)

-RESPONDENTS

(By Advocate- Mr.B.da.Silva)

O R D E R

By R.K.Upadhyaya, Member (Admnv.):

The applicant is aggrieved by the order dated 02.07.1998 (Annexure A-1) by which his services had been terminated w.e.f. 03.07.1998. He is also aggrieved by the rejection of his appeal against that order as well as the order of eviction of the applicant from the Quarter No.2/19, Type-I, Goa Lane, G.C.F. Estate Jabalpur by the Estate Officer (Annexure A-2).

2. It is stated that the applicant was appointed as Durban, Security Office in the Gun Carriage Factory, Jabalpur as per order dated 07.07.1995 on compassionate

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grounds after the death of his father. The appointment order dated 07.07.1995 (Annexure A-3) stated that the appointment was on a probation of two years. It is further stated by the applicant that because of his illness, he had to take leave during the period of probation. The leave also included the medical leave. It is claimed by the learned counsel for the applicant that the applicant's services have been terminated during the extended period of probation on the ground that the applicant has taken leave. The learned counsel states that the applicant has availed only leave, which is otherwise admissible to him. Therefore, taking leave is not a misconduct. It is also stated that the applicant has been given adverse reports in his Annual Confidential Evaluation with ulterior motives. Therefore, the order of termination as well as the order of the Estate Officer asking the applicant to vacate the premises allotted to the applicant be quashed.

3. The respondents in their reply have stated that the applicant did not improve in his performance in spite of several advices issued by the Senior Security Officer. He was careless towards his work, indulged in arguments and was not very regular in attendance. He had taken leave of 102 days and his performance was found unsatisfactory. His probation period was extended two times with an advice to improve his attendance as well as performance, failing which his services was to be terminated. Since the applicant did not improve in his attendance and performance despite advice, his services were terminated w.e.f. 3.7.1998. It is further stated by the respondents that the applicant had filed OA No.542/99, which was disposed of on 28.9.1999 with a direction to the respondents to dispose of the

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representation dated 10.7.98 and had also stayed the operation of eviction order. It is stated by the respondents that the impugned order dated 22.11.99 (Annexure A-1A) has been passed, in which it has been observed as follows:-

"In this connection, it is relevant to mention that Shri Gladwin Masih was appointed as Durwan wef 4.7.95 on compassionate ground with the 2 years probationary period. It is observed that during probationary period he had availed of 102 days leave in a very irregular manner. To improve his regularity in attendance his probationary period was extended twice but even though he failed to improve the performance of duties and on account of irregularity in attendance and poor performance his services were terminated. Hence it is regretted that the mercy appeal made by Shri Masih for re-instatement in service cannot be acceded to."

The respondents have further invited attention to the evaluation of the performance of the applicant by his superiors from time to time. It was stated by the learned counsel for the respondents that initially on appointment the applicant's performance was otherwise tolerable except that he started taking leave very frequently during the period from 4.01.97 to 20.06.97. The applicant was communicated adverse remarks in his performance evaluation, where his attendance was stated to be irregular and discipline was just average. In general assessment, he was found to be not responsible towards his duties and there was no improvement in spite of oral advice. In the first half of the year 1997, he had taken leave of 42 days. He was given advice as per letter dated 15.07.97 by which his probation period was extended for six months. He not only ^{took} leave, which was due to him, but also took leave without pay during the second half of the year 1997. By letter dated 07.01.98, the applicant was informed that he had taken leave of 20 days, whereas leave of 15 days was expected from a person during probation period. In the Annual Confidential Report

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for the first ^{half} period of 1998, it has been reported that the applicant was not interested in his work and also kept creating problems. Considering the irregular attendance and unsatisfactory performance of the applicant, his services have been terminated w.e.f. 03.07.98 as per order dated 02.07.1998. Against the order of termination, the applicant had appealed to the Ordnance Factory Board, who have passed the impugned order dated 22.11.99 rejecting his mercy appeal and upholding the order of termination.

4. We have considered the facts of the case and arguments advanced by the learned counsel of both the parties. We have also perused the material available on record including the termination file of the respondents in respect of the applicant.

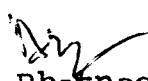
5. In our considered view, the termination of the applicant during the period of probation was justified on the facts of this case. The plea of malafide order raised by the learned counsel for the applicant is not borne out from the records. The entire probation period of the applicant if considered, we find that the applicant has been taking leave frequently. May be that the applicant has been sanctioned leave as per his entitlement including leave without pay, but leave cannot be claimed as a matter of right and regular attendance is expected from a Durwan. Availing frequent leave by a Durwan is certainly not desirable. He has also been found careless towards his work and his performance has not been found satisfactory. It is for the respondents to assess the suitability of a person in probation period and if they be found that the applicant was not a fit person to/retained


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in the employment, they were at liberty to dispense with ~~leave~~ his services. We do not find any irregularity, so far as the termination is concerned, The termination of the applicant is based on the relevant facts. During the probation period, ~~for~~ termination of services of ^{it} an employee/is not required to be based on any disciplinary proceeding and concrete evidence to justify such an action. In this view of the matter, we do not find any merit in this case. Therefore, the O.A. so far as it relates to termination is rejected.

5.1 Regarding the prayer of the applicant seeking order of relief against the/eviction from the accommodation allotted to him by the Estate Officer, it is noticed that Hon'ble Supreme Court in a recent decision in the case of Union of India Vs. Rasila Ram & others, 2002 SCC (L&S) 1016 have held that Administrative Tribunals have no power under the Act to deal with the matter relating to the eviction of unauthorised occupants from Government quarters. Therefore, the orders of the Estate Officer under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 cannot be adjudicated by this Tribunal. In view of the decision of the Apex COURT, the relief against the order of Estate Officer cannot be adjudicated by this Tribunal for want of jurisdiction. The applicant will be at liberty to agitate the same before an appropriate forum, if so advised. The interim order in regard continuance of the applicant in the Government accommodation is therefore vacated.

6. For the reasons mentioned in the preceding paragraph this application is rejected without any order as to costs.


(A.K. Bhatnagar)
Member (Judicial)


(R.K. Upadhyaya)
Member (Adminv.)

पृष्ठक सं ओ/न्या.....जबलपुर, दि.....

पत्तिलिपि अद्यो दितः:-

- (1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर
- (2) आवेक श्री/श्रीमती/कु.....के काउंसल Manoj Sharma, Adv.
- (3) प्रत्यक्ष श्री/श्रीमती/कु.....के काउंसल R. Dantua, Adv.
- (4) कार्यपालक, रीट प्रभ, जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

[Signature]
उप-सचिव
17.4.03

Issued
on 21.4.03
RS