

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 27.02.2013

OA No. 534/2010

Mr. Amit Mathur, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsels appearing for the respective parties.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K.S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 27th day of February, 2013

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. **ORIGINAL APPLICATION NO. 534/2010**

Monika Singh daughter of Shri Man Singh, aged about 26 years, resident of B-51, Motikunj Extension, Mathura (U.P.). At present working as Civilian Switch Board Operator, Mathura.

... Applicant

(By Advocate : Mr. Amit Mathur)

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Sena Bhawan, New Delhi.
2. Signal Officer in Chief, Army Head Quarter, Room No. 627, A-Wing, Sena Bhawan, New Delhi.
3. Commanding Officer, Composite Signal Regiment, Army Area, Alwar.
4. Commanding Officer, Signal Regiment (A-1 Core Signal Regiment) (Aren) Mathura.
5. Chief Signal Officer, South West Command, Army Area, Jaipur.
6. Officer in Command, Signal Records, Army Area, Jabalpur.

... Respondents

(By Advocate : Mr. Mukesh Agarwal)

2. **ORIGINAL APPLICATION NO. 535/2010**

A.K. Singh son of Shri Hari Mohan Prasad, aged about 32 years, resident of 84/4-C, Basant Vihar Colony, Civil Lines, Jhansi (U.P.). At present working as Civilian Switch Board Operator, Mathura.

... Applicant

(By Advocate : Mr. Amit Mathur)

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, Sena Bhawan, New Delhi.
2. Signal Officer in Chief, Army Head Quarter, Room No. 627, A-Wing, Sena Bhawan, New Delhi.
3. Commanding Officer, Composite Signal Regiment, Army Area, Alwar.

4. Commanding Officer, Signal Regiment (A-1 Core Signal Regiment) (Aren) Mathura.
5. Chief Signal Officer, South West Command, Army Area, Jaipur.
6. Officer in Command, Signal Records, Army Area, Jabalpur.

... Respondents

(By Advocate : Mr. Mukesh Agarwal)

ORDER (ORAL)

The OA No. 534/2010 (Monika Singh vs. Union of India & Others) and OA No. 535/2010 (A.K. Singh vs. Union of India & Others) have similar facts. Therefore, they are being disposed of by a common order. The facts of OA No. 535/2010 (A.K. Singh vs. Union of India & Others) are being taken as a lead case.

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was selected through regular selection procedure on the post of Civilian Switch Board Operator Grade II. The copy of the appointment order dated 04.06.2006 and 27.05.2006 have been annexed as Annexure A/2. He was initially appointed on a probation of two years. Though the applicant performed his services to the best of his ability, however, the respondents extended the probation period of the applicant by one year vide order dated 31.10.2008 (Annexure A/3).

3. The learned counsel for the applicant submitted that during the entire period of probation, no complaint was made against the applicant nor any show cause notice letter was issued to him to improve his performance. In the Attendance Register also, there is no such thing which suggest that the

Anil K. K...

applicant was not punctual to work. After the extension of probation period for one year, the applicant continued to perform his duty to the best of his ability. No show cause notice or letter asking for improvement in the working was issued to the applicant. No complaint was registered against the applicant in the register maintained by the respondents.

4. That the respondents again extended the probation period of the applicant vide order dated 19.09.2009 (Annexure A/4). The work of the applicant was very good, which is evident from the fact that he was given high speed board by the respondents themselves.

5. However, the respondents issued an order of termination dated 13.11.2010 (Annexure A/1). It was mentioned in this order that services will stand terminated with effect from the date of the expiry of a period of one month from the date on which the notice is served on or, as the case may be tendered to him.

6. The learned counsel for the applicant argued that the services of the applicant have been terminated by applying the provisions of CCS (Temporary Services) Rules, 1965. That no reason has been assigned in the order of termination as to why the service of the applicant has been terminated.

7. He further submitted that since the applicant was a probationer, his services could not have been governed by the Temporary Service Rules of 1965, therefore, the impugned order

Anil Kumar

dated 13.11.2010 (Annexure A/1) is liable to be quashed and set aside.

8. He further stated that had the respondents were not satisfied with the working of the applicant, they should have issued notice/letter/communication to the applicant so that he may improve his performance but the respondents did not issue show cause notice to him. He drew our attention to information received by the applicant under Right to Information Act dated 20.12.2011 in which it has been informed that no records pertaining to show cause notice and unsanctioned leave during the service period in respect of the applicant is held with CSRA. He also drew our attention to Annexure R/III in which at sr. no. 8, it has been stated that number of show cause notices served but in response to the Right to Information, it has been stated by the respondent department that no show cause notice was served to the applicant. Therefore, this entry in Annexure R/III is factually wrong and, therefore, the order passed by the respondents of his termination is based on wrong facts. Moreover, the respondents have not followed the principles of natural justice while passing the order dated 13.11.2010. Therefore, the OA be allowed.

9. On the contrary, the learned counsel for the respondents submitted that the applicant was appointed under Rule 5 of CCS (Temporary Service) Rules, 1965. He drew our attention to order of appointment dated 04.06.2006 (Annexure A/2) in support of his averments. Therefore, the services of the applicant have

Anil Kumar

been terminated under the same Service Rules vide order dated 13.11.2010.

10. That the applicant completed his probationary period of two years but due to adverse remarks in his service assessment period 05.06.2006 to 04.06.2008 (Annexure R/1), his probation period was extended to watch further his performance for a period of one year vide letter dated 31.10.2008 (Annexure A/3). The applicant was further assessed during May/June 2009 but no improvement in his performance was noticed and he was again recommended for extension of probationary period for another one year due to adverse remarks in his assessment report (Annexure R/II) vide letter dated 19.09.2009 (Annexure A/4).

11. The applicant was again assessed during May/June, 2010 and was given poor grading by the Reviewing Officer. Accordingly, he was not considered 'fit' for retention in service by the Reviewing Board. It recommended for discharge from service (Annexure R/III). Therefore, notice was issued to the applicant for termination of service under Sub Rule (1) of Rule 5 of CCS (TS) Rules, 1965 vide letter dated 13.11.2010 (Annexure A/1). This notice was served upon the applicant on 26.11.2010. However, orders for termination of service issued to the applicant vide order dated 14.12.2010 (Annexure R/IV). Accordingly, the applicant was terminated from service with effect from 25.12.2010.

12. The learned counsel for the respondents further submitted that the order issued by the Appointing Authority as per Sub

A. S. Kumar

Rule (1) of Rule 5 of CCS (TS) Rules, 1965 is self explanatory and reasons for such termination is not required to be mentioned in the order as brought out in the Government of India, Ministry of Home Affairs OM 39/14/56-Estt. (A) dated 22.06.1956. Hence, he submitted that the action of the respondents of terminating the services of the applicant is according to the rules and OA has no merit, therefore, it should be dismissed with costs.

13. Heard the learned counsel for the parties and perused the documents on record. We are not inclined to agree with the averments of the learned counsel for the applicant that the services of the applicant could not have been terminated under CCS (TS) Rules of 1965 because he was appointed as a probationer. We have carefully perused the appointment order issued to the applicant vide order dated 04.06.2006 (Annexure A/2) in which it has been specifically mentioned that the service of the applicant is liable to be terminated if not found satisfactory during probationary period. His attention was also drawn to the Recruitment Rules of CSBOs, Articles 202 of CSR Vol. I and Rule 5 of CCS (Temporary Services) Rules, 1965. Thus it is very clear from the appointment letter dated 04.06.2006 that the appointment of the applicant was under Rule 5 of the CCS (TS) Rules, 1965. If he has any objection regarding applicability of this Rule, then he should have objected to the respondents at the time of appointment. Therefore, we are of the considered opinion that the action of the respondents in terminating the services of the applicant under these Rules cannot be said to be illegal.

14. From the perusal of the order of extension of probation period dated 31.10.2008 (Annexure A/3), it is clear that his weak points, as brought out by his unit, were given to the applicant. They have been annexed with this order and he was given an opportunity to improve his working. Similarly, the order of extension of probation period dated 19.09.2009 (Annexure A/4) clearly mentions the weak points of the applicant, as brought by his unit. They were also communicated to the applicant. Therefore, the averment of the learned counsel for the applicant that the applicant was not given any opportunity to improve or issued any show cause notice is not based on facts but on the contrary he was given opportunity to improve his work twice by the respondents.

15. With regard to the averments of the learned counsel for the applicant that no show cause notice was served upon the applicant as mentioned at Sr. No. 8 of Annexure III of the respondents reply will not make any difference in this case because the order of extension of probation period dated 31.10.2008 (Annexure A/3) and further order of extension of probation period dated 19.09.2009 (Annexure A/4) clearly proves that weak point of the applicant were brought to his notice and he was given chance to improve his work.

16. We have carefully perused the Rule 5 of CCS (Temporary Service) Rules, 1965, which is quoted below:-

5. Termination of Temporary Service

A. S. Kumar

- (1)(a) The services of temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;
- (b) the period of such notice shall be one month:
-"

17. We have also carefully perused the Government of India, Ministry of Home Affairs OM NO. 39/14/56-Estt (A) dated 22.06.1956, which was referred to by the learned counsel for the respondents. OM is quoted below:-

"(4) Reasons should not be mentioned in the termination order. -

When action is taken under Rule 5 to terminate the services of a temporary employee, the order of termination, which should be passed by the appointing authority, should not mention the reasons for such termination."

As per this OM, reasons for such termination are not required to be mentioned in the order.

18. Thus we are of the considered view that the applicant is not entitled for any relief in the present OA. The OA has no merit.

19. Consequently, the OA is dismissed being bereft of merit with no order as to costs.

20. The Registry is directed to place the copy of this order in OA No. 534/2010 (Monika Singh vs. Union of India & Others).

(Anil Kumar)
Member (A)

(Justice K.S. Pathare)
Member (J)

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4/3/13