

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-4366/2015

Reserved on : 11.07.2017.

Pronounced on : 24.07.2017.

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Ms. Preeti Kathuria,
Aged about 34 years
Wife of Mr. Satish Pandey,
Resident of C-128, Sector-15,
Noida-201301, UP. **Applicant**

(through Sh. Talha Abdul Rahman, Advocate)

Versus

1. Lalit Kala Akademi,
Rabindra Bhavan,
35, Ferozeshah Road,
New Delhi-110001.
2. Ministry of Culture
Through the Under Secretary,
Union of India,
'C' Wing, Shastri Bhawan,
New Delhi-110001. Respondents

(through Ms. Harvinder Oberoi, Advocate)

ORDER

Mr. Shekhar Agarwal, Member (A)

The applicant responded to an advertisement issued by the respondents on 15.11.2012 inviting applications for the post of

Assistant Editor (Contemporary). She was selected and joined the organization on 03.10.2012. She has submitted that she is highly qualified and holds several degrees in visual art and has also studied and taught in prestigious institutions. According to her terms of appointment, she was put on probation for a period of 02 years. However, this period was extended further by 06 months. Before expiry of the extended period of probation, the applicant was terminated from service by impugned order dated 30.03.2015 after being given 01 month pay and allowances in lieu of the notice. An appeal made by her against the aforesaid termination order was dismissed by the competent authority vide order dated 06.10.2015. She has, therefore, approached this Tribunal seeking the following relief:-

- “(a) Appropriate order or direction quashing the impugned Order No. 3-10/2015-Akademis dated 06.10.2015 issued by Respondents.
- (b) Appropriate order or direction quashing the impugned Office Order Part II, No.77 dated 30th March 2015.
- (c) Appropriate order or direction directing the Respondents to reinstate the Applicant to the position of Assistant Editor (Contemporary) in the Respondent No.1 organization.
- (d) Grant of all benefits consequent to the grant of reliefs (a) and (b) hereinabove.
- (e) Grant of costs of this Applicant herein, and
- (f) Any further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”

2. The contention of the applicant is that respondents have not given reasons for termination of her services. The impugned order has been passed on extraneous considerations and is perverse. The extension of the probation period of the applicant was arbitrary. Moreover, this order is punitive in nature and has been passed without giving an opportunity to the applicant to defend herself.

3. The applicant has further stated that she had submitted a report on 08.09.2014 in which she had pointed out many discrepancies in the organization including several missing art works. Since she acted as a whistleblower, she has been penalized by the respondents. Consequently, a Memorandum was issued against her on 14.01.2015 in which she was warned for committing several mistakes in the editing of the annual report for the year 2013-2014. She was advised to take such important jobs seriously as any lapses in the same were to be regarded as dereliction of duties. Thereafter, she was dismissed from service. Under the circumstances, such dismissal should be regarded as punitive. The form of the impugned order was merely a camouflage for an order of dismissal based on misconduct or negligence. On these grounds, she prayed that the OA be allowed.

4. In their reply, the respondents have submitted that the services of the applicant were terminated based on her performance

appraisal report as per the CCS(CCA) Temporary Service Rules. Further, it has been submitted that the job of the applicant was to gather articles from different art critics/writer and to compile Akademi's English Journal Lalit Kala Contemporary. This journal was of 04 month periodicity i.e. three issues had to be brought out every year. However, during her 2 ½ year tenure the applicant could manage only two issues of the journal instead of seven issues. Similarly, only one issue of quarterly News Bulletin of Akademi's "Kala Samvad" was compiled by her instead of 10 issues. Thus, her performance was not upto the mark.

4.1 The respondents have further submitted that the applicant was advised by Memorandum dated 14.01.2015 to pay more attention to her work in future and was also warned that any lapses of such nature would be regarded as dereliction of duty. The aforesaid Memorandum was reformative in nature and not punitive.

5. We have heard both sides and have perused the material placed on record. The first ground taken by the applicant's counsel was that the impugned order dated 30.03.2015 had been passed under the CCS(CCA) Temporary Service Rules, 1965 whereas the applicant was working with the Lalit Kala Akademi to the employees of which these Rules do not apply as Lalit Kala Akademi is an autonomous body having Bye Laws of its own.

5.1 We have considered the aforesaid submissions and have also perused the Service Bye Laws of the Akademi. The relevant Bye Laws are reproduced as hereunder:-

“13. Probation

(1) Every person appointed to a post under the Akademi after the commencement of these bye-laws whether by promotion or by direct recruitment shall be on probation in such post [for the period indicated in the Recruitment Rules for the post].

(2) Where a person appointed to a post under the Akademi on probation is during his period of probation, found unsuitable for holding that post, or has not completed his period of probation satisfactorily, the Appointing Authority may:-

(i) In the case of a person appointed by promotion revert him to the post held by him immediately before such appointment.

(ii) In the case of a person appointed by direct recruitment, terminate his services under the Akademi without notice.

(3) Every person appointed to a permanent post under the Akademi by promotion or by direct recruitment shall, on satisfactorily completing his period of probation, be eligible for [confirmation] that post.

14. Temporary and Permanent Service

(i) An employee shall be a temporary employee of the Akademi until he is [confirmed in] a permanent post under the Akademi.

(ii) An employee [confirmed in a] permanent post under the Akademi shall be a permanent employee of the Akademi.

15. [Confirmation]

No employee shall be [confirmed in] any post unless:-

(i) Such post is permanent and no body else has been [confirmed in] it, and

(ii) the service of the employee under the Akademi is approved by the Appointing Authority.

16. Termination of Service

(1) The service of a temporary employee may be terminated by the Appointing Authority without assigning reasons:-

(i) During the period of probation [or extended period of probation as the case may be] following the first appointment, at any time without notice, and

(ii) After such period of probation, at any time by a notice of one month in writing given by the Appointing Authority to the employee or at any time without notice on payment of one month's pay and allowances.

(2) Without prejudice to the Provisions of clause (1), the service of a temporary employee shall terminate:-

(i) If his appointment is made for a specified period on the expiry of such period; or

(ii) If his appointment is made against a temporary post on the abolition of the post or on the expiry of the period for which the post is created.

(3) The service of a permanent employee may be terminated by a notice of three months or on payment of pay and allowances for such period as the notice falls short of three months or without notice on payment of three month's pay and allowances, if the post [in which he is confirmed] is abolished.

(4) An employee who is given notice of termination of service under clause (3) may be granted during the period of notice such earned leave as may be admissible

to him and where the leave so admissible and granted [extends beyond the notice period] his service shall terminate on the expiry of such leave.

(5) Notwithstanding anything contained in clauses (1), (2), (3) and (4) above, the service of an employee whether permanent or temporary may be terminated without any notice or pay in lieu thereof as a result of disciplinary proceedings against him."

5.2 On going through the aforesaid Bye Laws, we find that according to Bye Law-14(i), an employee shall be considered to be a temporary employee till he is confirmed. According to Bye Law-16(i) , a temporary employee may be terminated during the period of probation or extended period of probation, as the case may be without notice. Thus, in our opinion, under the relevant Bye Laws, the respondents did have power to terminate the applicant during probation period without assigning reasons. While there is merit in the contention of the applicant that CCS (CCA) Temporary Service Rules could not have been invoked in her case, the fact remains that under the relevant Bye Laws, the respondents did have authority to terminate the services of the applicant during her probation period. It is settled law that mere mention of wrong Rule does not vitiate the order. Thus, mention of CCS(CCA) Temporary Service Rules in the order does not prove to be fatal since under relevant Bye Laws the respondents had powers to terminate the applicant.

6. The applicant contended that the order passed against her was punitive in nature. This is because she was terminated on the ground that she had committed several mistakes while editing the annual report of the year 2013-2014. Since the order was punitive based on the misconduct committed by her, it was required of the respondents to hold an enquiry before passing the termination order. Since no such enquiry was held, the aforesaid order was bad in law and deserves to be quashed. We are, however, not inclined to agree with this argument. On perusal of the O.M. dated 14.01.2015 issued to the applicant, we find that she was warned for committing several mistakes in editing of the report. She was advised to take her job more seriously and avoid committing such lapses in future, otherwise, the same would be regarded as dereliction of duty. Clearly, the language used in the O.M. is reformative in nature. The applicant, who was on probation, was advised to improve her performance. She has not been accused of any misconduct as committing mistakes in editing the annual report cannot be regarded as misconduct. At best, it can be regarded as negligence or carelessness but this does not amount to misconduct. Therefore, there is no merit in the contention of the applicant that termination was based on misconduct and could not have been resorted to without holding an enquiry.

7. In fact, in the reply filed by the respondents they have given several instances as to why performance of the applicant was adjudged to be below par. She could compile only 02 issues of the Lalit Kala Contemporary Journal in 2 ½ years of her tenure against requirement of 07. Similarly, she could bring out only one issue of News Bulletin of Akademi's "Kala Samvad" against requirement of 10. In the ACRs relied upon by the respondents, she has been given grading of only four. About her performance, the reporting officer has observed as follows:-

"Lacks editing skills. No past experience in the concerned field. Arrogant in her behavior and argues a lot on petty issues. Tries to evade responsibilities and does not take initiative to complete the work on deadlines. Also remains absent from her seat for long duration."

7.1 After consideration of all the material placed before us, we are of the opinion that respondents gave a warning to her and advised the applicant to improve her performance. Thereafter, they extended her probation period to give her time to show improvement in her performance. When her performance was not found to have improved even during the extended period of probation, the impugned period of termination was passed.

7.2 The applicant had argued that the ACR relied upon by the respondents could not have been so relied upon as it was never communicated to her. Consequently, principles of natural justice

have been violated. We are not much impressed by this argument. This is because it is not disputed by the parties that the applicant was on probation or extended probation when the ACR in question was written. In the case of **High Court of Judicature at Patna Vs. Pandey Madan Mohan Prasad Sinha**, (1997) 10 SCC 409 the Apex Court has held that the law is well settled that a probationer does not have a right to hold the post during the period of probation. As such, a probationer's position cannot be equated with that of an employee, who had been substantially appointed on a post and had a right to hold that post. A probationer, therefore, cannot claim a right to be heard before an order terminating his services is passed. Moreover, there is no obligation to communicate the adverse material to a person before taking action against him as this is a facet of the principles of natural justice, which have no application in the case of probationer. The Apex Court concluded that there is no obligation to communicate adverse material to a probationer before taking a decision based on the same and such material can be relied upon to establish that such a decision was not arbitrary or capricious. Again in the case of **H.F. Sangati Vs. Registrar General, High Court of Karnataka**, (2001) 3 SCC 117 the Apex Court concluded that there was no requirement to comply with the principles of natural justice in the case of a probationer. In the case of **Rajesh Kumar Srivastava**

Vs. **State of Jharkhand**, (2011) 4 SCC 447 the Apex Court has ruled as follows:-

"9. A person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the appellant are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that he should be confirmed, or he should be released from service. In the present case, in the course of adjudging such suitability it was found by the respondents that the performance of the appellant was not satisfactory and therefore he was no suitable for the job.

10. The aforesaid decision to release him from service was taken by the respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the appellant nor he is required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not."

7.3 The same view has been reiterated by Hon'ble High Court of Delhi on 13.04.2017 in the case of **St. Thomas School Vs. Manish Kaushik & Anr.**, [WP(C) No. 1264/2016] wherein in para-9 the following has been observed:-

"9. I may note that as per the Terms and Conditions of services of the respondent no. 1 with the petitioner/school, and as stated in para 1 of the contract of services, during the probationary period a probationer can be terminated without

assigning any reason. It is seen that the petitioner/school was not satisfied with the services of the respondent no. 1. Whether or not a probationary employee's services are satisfactory or not, it is for the employer to decide the same, and this Court cannot substitute its view for that of the employer with respect to satisfactory services or otherwise of employee with the employer."

7.4 The applicant had relied on the judgment of Apex Court in the case of **SBI Vs. Palak Modi**, (2013) 3 SCC 607 to say that if an order is passed against a public servant, which casts aspersion against his character or integrity, it must be regarded as a punishment. However, in our opinion, this judgment is not applicable in the present case because no order has been passed against the character or integrity of the applicant. All the material presented by the respondents relates to the work and conduct of the applicant.

7.5 The applicant has further relied on the judgment of Apex Court in the case of **Shamsher Singh Vs. State of Punjab**, (1974) 3 SCC 831. However, this judgment also is of no help to her because we have already come to the conclusion that her removal was not on the ground of misconduct but on the ground of unsatisfactory performance whereas the judgment deals with the case involving removal on the ground of misconduct.

8. Lastly, the applicant had also argued that her termination was a result of mala fide as she had acted as a whistleblower and exposed several missing art work in her report dated 08.09.2014 when

she was mandated to verify 260 exhibits/artworks which were displayed at the respondent No.1's gallery as part of the 60th year exhibition, titled as Artists' India. However, while mala fide has been alleged, no person has been impleaded as party by name. No evidence has also been advanced by the applicant in support of her contention. Thus, her allegation of mala fide cannot be relied upon.

8.1 No other ground was pressed before us.

9. In view of the above, we find that this O.A. lacks merit and is, therefore, dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/