

(RESERVED ON 07.08.2019)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD**

This is the 04th day of **September, 2019**.

ORIGINAL APPLICATION NO. 330/01410/2017

**HON'BLE MS AJANTA DAYALAN, MEMBER (A)
HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)**

Neeraj Kumar, S/o Late Surendra Kumar, R/o Mohalla Poorvi Afgan, Nakur Chungi, Saidpur Road, Sarsawa, District Saharanpur (U.P.).

.....Applicant

VERSUS

1. The Director, Aviation Research Center, Head Quarters, Directorate General Security, East Block-5, R.K. Puram, New Delhi.
2. Deputy Director (Administration), Aviation Research Centre, Government of India, Sarsawa, District – Saharanpur (U.P.).

.....Respondents

Advocate for the Applicant : Shri Ajay Rajendra

Advocate for the Respondents : Shri Santosh Kumar Rai

O R D E R

Delivered by Hon'ble Ms. Ajanta Dayalan, Member-A

The present OA has been filed by the applicant Neeraj Kumar seeking quashing of impugned order dated 28.08.2017 (Annexure A-1) terminating his services and relieving order dated 28.09.2017 (Annexure A-2). It is also prayed that the applicant be reinstated on the post of Junior Field Assistant (Safaiwala).

2. According to the applicant, his father Surender Kumar was working as permanent JFA (SW) and died in harness on 21.01.2011. Thereafter, the applicant was selected by the department for compassionate appointment vide letter dated 10.09.2013 (Annexure A-3). He joined against a permanent post of JFA (SW) on compassionate ground as Trainee in pay band Rs. 5200-20200/- with grade pay of Rs. 1800/-. The applicant has further stated that vide letter dated 30.01.2014 (Annexure A-4), he

was given salary in pay band Rs. 4440-7440/- without grade pay as he was not High School passed at that time, which is minimum qualification for Group 'D' post. It was further provided in the letter dated 30.01.2014 that regular appointment of the applicant on the post of JFA (SW) will start after his acquiring minimum educational qualification within a period of 5 years from the date of joining as trainee. It was also provided in the said letter that his probation period will start from the date he acquires minimum educational qualification. He will be on probation for a period of 2 years from the date he acquires minimum educational qualification, which may be extended as per rules on the subject at the discretion of the competent authority.

3. Learned counsel for the applicant stated that the applicant passed his High School examination on 09.06.2015. Thereafter, vide letter dated 23.10.2015 (Annexure A-5) he was placed in the regular grade of Rs. 5200-20200/- with grade pay Rs. 1800/- on compassionate ground. In the said letter, it was provided that he will be on probation for a period of two years with effect from 09.06.2015 i.e. date of his acquiring minimum educational qualification of 10th pass. The period of probation could be extended or curtailed at the discretion of the competent authority but such extension or curtailment of period will not be exceed one year. Learned counsel for the applicant further stated that 2 years probation period of the applicant completed on 30.12.2015 as he joined duties on 30.12.2013. Alternatively, the probation period could be said to be completed on 09.06.2017 i.e. two years after passing of his High School with effect from 09.06.2015. Learned counsel for the applicant argued that any other interpretation regarding completion of probation period would be wrong and illegal.

4. Learned counsel for the applicant further stated that by letter dated 23.08.2017 (Annexure A-7), the applicant was referred to CMO, SBD Hospital, Saharanpur for medical examination. In the letter, the CMO was directed to furnish requisite report to departmental representative Shri S.S. Saini in sealed cover for further course of action. A copy of this letter was also given to the applicant. From this, it was seen by the applicant that In-charge Officer has reported that on 07.08.2017, unusual behavior of the applicant seemed to be mentally unfit, lacking body balance while walking and shaking hands. However, no report of In-charge Officer was given to the applicant. In response to this letter, CMO constituted a Medical Board consisting of 3 doctors, which examined the applicant on 24.08.2017 and gave its report to Shri S.S. Saini. No copy of this report was given to the applicant. A letter dated 28.08.2017 (Annexure A-8) was thereafter issued to the applicant providing a copy of medical report alongwith CMO's covering letter dated 24.08.2017.

5. Learned counsel for the applicant argued that in the medical report, it is said that the applicant is suffering from epilepsy and is alcoholic whereas such conclusion cannot be reached without requisite tests. Learned counsel for the applicant further argued that the report of the Medical Board dated 24.08.2017 also advised the applicant for treatment in higher medical institute for diagnosis and conclusion. Hence, unless the applicant was medically treated in higher medical institute, no definite opinion with regard to alleged diseases could be formed. Besides, both diseases are curable. Learned counsel for the applicant further argued that as is apparent from the letter dated 28.08.2017 (Annexure A-8) , the Deputy Director had already formed his opinion prematurely that the applicant is suffering from epilepsy and alcohol addiction. He, thereafter,

directed the applicant to take proper treatment in a suitable hospital, as advised by the Medical Board.

6. Learned counsel for the applicant further argued that on 28.08.2017 (Annexure A-1) itself without providing any opportunity of medical treatment in higher medical institute, the respondents terminated the services of the applicant in terms of Rule 5 of CCS (Temporary Service) Rules, 1965 treating the applicant as temporary employee. Learned counsel argued that this order is totally arbitrary, discriminatory and illegal simplicitor. Thereafter the applicant was also relieved from duty on 28.09.2017 i.e. after expiry of one month period in terms of order dated 28.08.2017.

7. The case of the applicant is that he was appointed on compassionate ground in place of his deceased father on a permanent Group 'D' post of JFA (SW) on regular basis. As such, it is illegal to treat the applicant as temporary employee. Learned counsel for the applicant argued that Rule 5 of CCS (Temporary Service) is not applicable on compassionate appointment as temporary service is not given under this scheme and hence, it is not applicable to the applicant. Learned counsel for the applicant further stated that it is wrong to say, as given in the order dated 28.08.2017 that from non-attendance of the applicant, it was *prima facie* apparent that he had lost his interest and expectations from his current employment. He stated that the applicant is very poor and he still wishes to continue with his service in the department. Learned counsel for the applicant further stated that the applicant is an SC by caste and the respondents may be in the process of appointing some other person in his place, which would be incorrect. He,

therefore, pleaded that the impugned order should be quashed and the applicant should be reinstated in service.

8. The respondents have contested the claim of the applicant. Learned counsel for the respondents stated that Aviation Research Centre is a security organization of Government of India. Considering the services of his late father, who died in harness, the applicant was appointed on compassionate ground. Offer of appointment was issued to him vide letter dated 19.12.2013 (Annexure CA-1). In terms of this letter, the applicant was appointed as trainee till he attains minimum educational qualification of matriculation required for the post. The applicant joined on 30.12.2013 and acquired minimum educational qualification on 09.06.2015. Thus, his initial period of probation for 2 years as JFA (SW) started with effect from 09.06.2015 and would have normally been over on 08.06.2017. During this period of probation, the applicant did not work to the expectation of the respondents' department in conformity with the requirements of his job and started staying on unauthorized absence without intimation to or permission of the competent authority. The applicant was conveyed to improve his conduct due to which tasks assigned to him remained hampered.

9. Learned counsel for the respondents further stated that except few exemptions and relaxations with respect to qualification, there is no relaxation or exemption for a temporary employee appointed on compassionate ground with respect to confirmation and termination of service and normal procedure is applicable to the appointee on compassionate ground as in the case of other Government employees. The respondents in the instant case have also followed this procedure while terminating the service of the applicant. Learned counsel for the

respondents pleaded that the contention of the applicant that his father was permanent employee and thus he also holds the status of permanent employee does not hold good. He stated that the terms and conditions of offer of appointment are mentioned in the memorandum dated 19.12.2013 (Annexure CA-1) and the applicant accepted those terms and conditions and only thereafter joined on 30.12.2013. The respondents have taken into cognizance the terms and conditions mentioned in the offer of appointment and other rules and instructions in vogue and having found no improvement in satisfactory conduct of the applicant, the respondents had to terminate the services of the applicant vide notice dated 28.08.2017.

10. Learned counsel for the respondents also argued that the contention of the applicant challenging the opinion / medical advice of the qualified Medical Board constituted by the CMO, Saharanpur does not hold good. Learned counsel further stated that while the applicant is challenging the finding and opinion of Medical Board on one hand, he is contesting his termination without giving him time and opportunity for treatment which itself is counter intuitive. Even if for arguments sake, it is assumed that the applicant was alcoholic and required medical treatment, it itself proves that the applicant was unsuitable for the job in security organization like Aviation Research Centre. The respondents have also clarified that the applicant was not terminated from service on account of medical opinion but for unsatisfactory conduct and service leading to his unsuitability for the job. Thus, the termination of the applicant, who was a temporary employee, is covered by terms and conditions of offer of appointment and other rules and instructions and hence, is legal.

11. The respondents have stated that the applicant was appointed on temporary basis on a prescribed probation and was covered under CCS

(Temporary Service) Rules 1965. The post to which the applicant was appointed pertains to Group 'C' category, and not Group 'D' category as contended by the applicant. His appointment was purely on temporary basis and was subject to fulfilment of terms and conditions of confirmation on the post. The applicant accepted the terms of service before joining the post on 30.12.2013. At no point of time, he has challenged his status of being temporary employee. As such, he has no locus standi at this stage to state that he was appointed permanently.

12. The respondents have further pleaded that the contention of the applicant that his probation period started on 09.06.2015 and completed on 09.06.2017 is in contravention of relevant rules and instructions. It is stated that as per the established norms, the probation period is extendable by one year or double the normal probation period i.e. 2 years in this case. The Government of India has also issued orders stating that the confirmation of a probationer after completion of his period of probation is not automatic but is to be followed by formal order and as long as no specific order of confirmation or satisfactory completion of probation is issued to him, the employee shall be deemed to have continued on probation. The reason is that the appointment on probation is conditional appointment and unless the condition of satisfactory completion of period of probation is satisfied and is declared so by the competent authority, the probationer cannot acquire the status of a permanent member of service. Thus, making of a confirmation order is not a formality. It involves a conscious decision by the appointing authority based on due assessment of conduct and work of the probationer. Therefore, an expressed order of confirmation is a must and cannot be presumed by a mere expiration of time. Therefore, the presumption of the applicant that his period of probation completed on 08.06.2017 is nullity

in the eyes of law. It is true that the period of probation was to complete on 08.06.2017; but since the applicant's service was not found satisfactory, he remained on deemed continued probation beyond the said period and was terminated for unsatisfactory service, conduct and unsuitability without stigma.

13. Learned counsel for the respondents has also stated that the contention of the applicant that the In-charge Officer wrongly reported his behavior is unacceptable as no conclusion could be drawn without comments of Medical Board. Regarding the objection of the applicant for presence of departmental representative Shri S.S. Saini during medical examination, the respondents have stated that the departmental representative was asked to escort the applicant and to facilitate him for undertaking his medical examination in the light of his mental condition. In the fitness of things, it was felt essential to route the applicant to the hospital with an escort to avoid any kind of inconvenience to the applicant. In any case, the departmental representative was not a part of medical examination team and only the CMO was requested to carry out the required medical examination by constituting a Medical Specialists Board. Hence, the contention of the applicant that the presence of the departmental representative was influencive, does not hold good. The respondents have also refuted the allegation of the applicant that his service has been taken away to give the same to some other person.

14. The respondents have further pleaded that they have neither made their definite opinion with regard to the alleged disease nor have taken the same into cognizance while deciding to terminate the applicant from service. The applicant has been terminated for unsatisfactory service, conduct and unsuitable for the job. The allegation of the applicant that the

respondents' department had already formed its opinion prematurely that the applicant is suffering from epilepsy and alcohol addiction is against the facts on record.

15. The respondents have stated that the order dated 28.08.2017 is not arbitrary or discriminatory. The applicant was found not sincere to his job and absenting himself off and on without due intimation to the competent authority. He was asked to improve his conduct but to no avail. In this regard, the respondents have enclosed OMs dated 26.05.2017 (Annexure CA-5), 14.07.2017 (Annexure CA-6) and 21.07.2017 (Annexure CA-7). Besides, his half yearly confidential reports for the period ending 08.12.2016 (3rd) and 08.06.2017 (4th) also incorporate non-punctuality and irregularity on the part of the applicant in discharge of his duties. As such, interest /needs and expectations from the applicant were not found in conformity with the requirement of his assigned job and therefore, his services were terminated.

16. In the end, the respondents have concluded that the action taken by the respondents is in conformity with various rules and instructions and the applicant has failed to come forth with any cogent ground for filing the OA. Thus, the grounds of claim of the applicant are vague, misconceived and misleading and the OA deserves to be dismissed.

17. We have heard both the counsels for parties and have gone through the pleadings of the case. We have also given our thoughtful consideration to the entire matter.

18. The basic facts of the case are not in dispute. The applicant was appointed on compassionate grounds and joined the department on

30.12.2013. The fact that he acquired educational qualification of matriculation on 09.06.2015 is also not disputed. His initial period of probation for 2 years started from 09.06.2015 is also not disputed. Thereafter, some differences in views exist between the applicant and the respondents. These differences and our opinion thereon are being discussed in the following paragraphs.

19. First of all, the applicant believes that he is not a temporary employee. The grounds for this belief are basically two folds – firstly, his father was a permanent employee and secondly, he was appointed on compassionate ground and so Rule 5 of CCS (Temporary Service) Rules does not apply to him. The fact that the father of the applicant was a permanent employee and died in harness does not have any relevance to the status of the applicant at all. The applicant will be governed by terms and conditions of his appointment and at best specific instructions regarding compassionate appointment. But these instructions generally cover only as to how such appointments are to be made – in other words the criteria for making such appointments. These instructions do not differentiate between the persons appointed on compassionate grounds and other government servants appointed on regular basis. Besides, we note that Rule 5 of Temporary Service Rules reads as follows: -

‘5. Termination of temporary service.

(1) (a) The services of a temporary Government servant shall be liable to be terminated 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.

Provided that the services of any such Government servant may be terminated forthwith and on such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the

notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.'

20. Mere reading of this rule clearly shows that there is no differentiation whatsoever in this Rule regarding persons appointed on compassionate basis or otherwise. We also observe that as per this Rule, service of temporary Government servant can be terminated at any time by giving a notice of one month. This has been followed in the instant case and as such, there is no violation of Rule 5.

21. Besides, we also note that the definition of temporary service is as follows :-

' "temporary service" means the service of a temporary Government servant in a temporary post or officiating service in a permanent post under the Government of India.'

22. Thus, we see that word 'temporary' covers all services in a temporary post or officiating service in permanent post. But this definition does not inform us about the status of the applicant in Government service for which we will have to refer to his offer of appointment. However, this Rule does make it clear to us that there is no differentiation in the definition of temporary service as given in the Temporary Service Rules between the compassionate appointee and other Government servants.

23. In view of above, we do not find that there is any ground to believe the persons appointed on compassionate ground need to be treated differently than the persons appointed otherwise.

24. As regards the status of the applicant, the respondents have provided his original appointment order dated 19.12.2013 (Annexure CA-

1). A bare perusal of this order makes it clear that 'the appointment is purely on temporary basis and until further orders'. The applicant was to continue as trainee on compassionate ground till he acquires minimum educational qualification. This order in paragraph 2(b) further states as follows: -

'2(b). The service of the appointee may be terminated on one month's notice from either side in accordance with Central Civil Service (Temporary Service) Rules 1965 without assigning any reason. The Appointing Authority, however, reserves the right of terminating the services forthwith or before the expiry of the stipulated period of notice by making payment of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.'

25. Thus, it is made clear in the appointment order that the applicant was appointed on temporary basis and his services can be terminated with one month notice from either side in accordance with CCS (Temporary Service) Rules 1965 without assigning any reason.

26. We further note that paragraph 2(c) of offer of appointment dated 19.12.2013 reads as follows: -

'2(c). His probation period will start from the date he acquires minimum educational qualification. He will be on probation for a period of two years from the date he acquires minimum educational qualification, which may be extended as per rules on the subject at the discretion of the Competent Authority.'

Thus his period of probation of two years started on 09.06.2015 and in normal course would have completed on 09.06.2017. However, we find that as per the Government of India orders, confirmation of probationer after completion of period of probation is not automatic but is to be followed by a formal order and as long as no specific order of confirmation or satisfactory completion of probation is issued to him, the employee shall be deemed to have continued on probation. The reason is that the appointment on probation is conditional appointment and unless the period of probation is completed satisfactorily and is declared so by the competent authority, the probationer cannot acquire the status of a permanent member of service. This means that a confirmation order is not a formality. It involves a conscious decision by the appointing authority based on due assessment of conduct and

work of the probationer. Therefore, an expressed order of confirmation is a must and cannot be presumed by a mere expiration of time. We agree with the above contention of the respondents. In fact, we find that in the instant case, atleast three OMs were issued to the applicant in May 2017 and July 2017 (Annexure CA-5 to CA-7) regarding his unauthorized absence. We further note from these annexures that the applicant absented himself from duty for over two months even during his period of probation right from 06.03.2017 to 11.05.2017. Besides, there are other shorter spells of absence stretching to about three weeks. Total unauthorized absence is of more than three months. As such, he can in no way be said to have completed two years of probation on 09.06.2017 or till the date of issue of impugned order on 2808.2017. Further, his half yearly confidential reports for the period ending December 2016 and June 2017 also incorporate non-punctuality and irregularity on the part of the applicant. Despite these memos/advisories, the applicant failed to improve his conduct. Hence, in the specific circumstances of the instant case, we do not find any reason to conclude that the applicant completed his probation satisfactorily on 09.06.2017. There is also no formal order by the respondents to this effect. On the other hand, the respondents have concluded that in view of his conduct and behavior, the respondents were forced to terminate the service of the applicant vide notice dated 28.08.2017.

27. We further observe that even though the applicant is disputing his treatment as temporary government servant, he has not challenged his original appointment dated 19.12.2013 (Annexure CA-1). As indicated in above paragraphs, this order itself specially in para 2 states that his 'permanent appointment to the post will depend on various factors governing permanent appointment to such posts in force at the time'. The order further states that his service may be terminated at any time on one

month notice from either side in accordance with Central Civil Service (Temporary Service) Rules 1965 . The applicant has accepted the terms and conditions and has not challenged them any time after joining on 30.12.2013. This order is not challenged even in the present O.A.

28. Hence, we do not find that there can be any justified ground on the part of the applicant to claim that he was a permanent employee or to claim that he was not governed by CCS (Temporary Service) Rules 1965.

29. We also observe that even though the appointment order very clearly states that the service of the applicant can be terminated without assigning any reason, the respondents have in fact given reasons that his interests/needs and expectations from his current employment are not in conformity with the requirement of his assigned job in a security organization like Aviation Research Centre. The respondents have also recorded his non-attendance as the reason for his termination. The respondents have given atleast three memorandums (Annexure CA-5 to CA-7), which have been issued to the applicant to improve his conduct. Despite these repeated memorandums during his probation period, the applicant failed to improve his conduct. Considering the nature of organization, we consider it within the rights of the respondents' department to decide the suitability of the applicant for the job for which he was appointed. We, therefore, do not find any illegality or impropriety in the impugned orders on this ground.

30. Regarding the issues raised by the applicant regarding his mental fitness and medical examination, we observe that these issues have been rebutted by the respondents. However, these issues are not relevant to us for deciding the question before us. This is because the respondents have categorically stated that the medical fitness or otherwise of the applicant

was not a factor before them while deciding termination of his service. The respondents have stated - and we find these to be corroborated by the termination order - that the termination order has been issued by the competent authority solely on the ground of absence and unsuitability of the applicant and not on medical ground. Hence, this issue is not relevant to the basic issue of illegality and impropriety of impugned orders and hence, is not discussed here.

31. In view of all above, we find that the OA is devoid of merits and is dismissed accordingly. No order as to costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(AJANTA DAYALAN)
MEMBER-A

Anand...