

Court No. - 39

Case :- WRIT - A No. - 20428 of 2019

Petitioner :- Neeraj Kumar

Respondent :- The Director, Aviation Research Center And Another

Counsel for Petitioner :- Ajay Rajendra, Awadhesh Kumar Sharma, Shesh Nath Bhatt

Counsel for Respondent :- A.S.G.I., Suchit Tandon

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Sri Shesh Nath Bhatt learned counsel for the petitioner and Sri Suchit Tandon learned counsel for the Union respondents.

2. Present writ petition had been filed by Neeraj Kumar (since deceased) (hereinafter described as 'original petitioner'), against the order dated 04.9.2019 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad in Original Application No. 330/01410/2017 (Neeraj Kumar Vs. The Director, Aviation Research Center And Another). By that order, the learned Tribunal has dismissed the Original Application filed by the present petitioner and thus confirmed the order dated 28.8.2017 passed by the disciplinary authority terminating the engagement of the original petitioner from the post of Junior Field Assistant (Safaiwala). At that time, the original petitioner was serving under probation.

3. Undisputedly, father of the original petitioner namely Surendra Kumar was permanent Junior Field Assistant (Safaiwala) at the respondent establishment. He died in harness on 21.1.2011. Arising from that unfortunate occurrence, original petitioner was granted compassionate appointment on 10.9.2013. Since the original petitioner did not hold the minimum educational

qualification required for the post namely, HighSchool, his initial engagement was made as a Trainee in the pay scale Rs. 5200-20200/- with grade pay Rs. 1800/-. He passed his HighSchool examination on 09.6.2015. Consequently, in terms of letter of appointment, he was appointed as Junior Field Assistant (Safaiwala), on probation, w.e.f. 09.6.2015. Again, under the terms of appointment, the initial period of probation was to continue up to 09.6.2017. It was extendable by a further period of one year i.e. 09.6.2018.

4. However, for reason that has yet not been proven, the original petitioner was subjected to medical examination at the instance of the employer, vide letter dated 23.8.2017. He was referred to the Chief Medical Officer, SBD Hospital, Saharanpur for medical examination. In the meanwhile, on 07.8.2017 an unusual behaviour of the original petitioner was reported to his officer incharge. That document reads as below:-

"ROUTING BACK: SH NEERAJ KUMAR, JFA(SW)

Reference is made to this office letter No. 1447 dated 14 Jul 2017 of even reference.

2. On reporting to duty of 07 Aug 2017 Sh. Neeraj Kumar, JFA(SW) is behaving unusually and seems to be mentally unfit. The official is lacking body balance while walking and hands are shaking. He is unable to discharge his duties properly and disappearing from work place in between. He has damaged utensils & disrupted the office ambience while executing his job.

3. Hence Sh. Neeraj Kumar, JFA(SW) is routed to your office under escort for medical check up and necessary treatment."

5. In turn, the Chief Medical Officer constituted a medical board of three doctors who examined the original petitioner on 24.8.2017. The report of the medical board reads as below:-

"बोर्ड के सदस्य डा० अंशुमान तिवारी मनोरोग विशेषज्ञ (शेखउल हिन्द मेडिकल कालेज, सहारनपुर डा० आर०के० टन्डन (व० परामर्शदाता फिजीशियन) डा० योगेश अग्रवाल (व० आर्थो सर्जन) ने निष्कर्ष निकाला कि मरीज एपीलेप्सी एवं नशे (एल्कोहल) की बीमारी से ग्रस्त है अतः मरीज को सेना के उच्च संस्थान में भर्ती कर उचित निदान व निष्कर्ष निकालने की कृपा करें। उक्त बीमारी इसके पिता की मृत्यु के उपरान्त

उत्पन्न हुई है तथा अटैक के समय इसे अपनी स्थिति (व्यवहार) का कोई भी ज्ञान नहीं रहता है।"

6. It is in such circumstances that the original petitioner's engagement came to be terminated under Rule 5 of the CCS (TS) Rules, 1965 (hereinafter referred to as the 'Rules'), vide further communication dated 28.8.2017. It reads:

"OFFICE MEMORANDUM

Reference ARC, SWA (i) No. 2/ARC/SWA/Estt/13(500)-5971 dated 26/5/2017

(ii) 2/ARC/SWA/Estt/13(500)-5971 dated 14/7/2017

(iii) No. 2/ARC/SWA/Estt/13(500)-8400 dated 21/7/2017

Vide reference above it was seen that considering the non attendance of Sh. Neeraj Kumar JFA (SW) at ARC, SWA who is temporary employee, it was prima facie apparent 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 ARC. Accordingly, it is felt best in the interest of both the organization and Sh. Neeraj Kumar that his services be severed through an order of Termination Simplicitor in terms of the Rule 5, CCS (TS) Rules, 1965.

1. Sh. Neeraj Kumar whose services have not been confirmed continues to be a temporary employee and is thus governed by the provisions of CCS (TS) Rules, 1965. Para -2(b) of his offer of appointment also makes it clear that his services can be terminated at any time with one month's notice. Considering these enabling provisions and the facts and circumstances of the case therefore, the services of Sh. Neeraj JFA (s/W), ARC, SWA are hereby terminated with effect from the month from the date of issue of this order. Accordingly, services of Sh. Neeraj Kumar, JFA (W), ARC, SWA will stand terminated with effect from the A/N of 28 Sep 2017."

7. For ready reference, rule 5 of the Rules reads as below:-

"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."

8. In the above regard, clause 2 of the appointment letter dated 23.10.2015 reads as below:-

"2. He will be on probation for a period of two years w.e.f. 09.06.2015 (i.e. date of acquiring minimum educational qualification i.e. 10th pass), which may be extended or curtailed at the discretion of the Competent Authority, but such extension or curtailment shall not exceed one year."

9. Submission of learned counsel for the petitioner is, even if it may be assumed that the original petitioner had not been confirmed in service, it is not the case of the respondents that his probation was not continued. In fact, under the appointment letter dated 23.10.2015, his engagement on probation began on 9.6.2015. Two years therefrom had expired on 9.6.2017. The original petitioner was not immediately disengaged at the end of that period, rather the disengagement letter is dated 28.8.2017. Therefore, it has to be assumed that his probation had been extended by one year.

10. Second, referring to the medical report dated 24.8.2017 and the communication dated 7.8.2017 (extracted above), clearly, the original petitioner was facing a serious medical condition. It made him lose control over his body balance while walking and impaired his locomotor abilities, seriously. For reason of that medical condition suffered by the original petitioner, it was further reported that he was unable to discharge his duties properly and that he was absenting from work, for that reason.

11. Once such a medical condition had been reported to the Superior Officer of the original petitioner, indifferent treatment has been offered by the authorities in dispensing with the engagement of the original petitioner. In the first place, a human being may not be blamed for things beyond his control. Second, a person suffering from a serious medical condition deserves sympathy and understanding both from the society in general and his work superiors, in particular. Third, by virtue of the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as 'the Act'), the original petitioner may not have been summarily dismissed from service relying on Rule 5 of the Rules. That statutory rule may remain subservient to the object and provisions of the Act.

12. Last, it has been submitted that in any case the original petitioner died on 15.07.2022 without diagnosis of his illness. Thus, it has been submitted that the original petitioner may be treated to have been regularized and all consequential benefits may be paid to him.

13. On the other hand, learned counsel for the Union of India would submit, confirmation in service could have arisen only upon due performance of satisfactory service during the length of probationary appointment.

14. Since the original petitioner did not complete his probation, satisfactorily, he was not confirmed in service. The Tribunal has not erred in treating the original petitioner on probation. By virtue of that indisputable fact, status of the original petitioner remained that of a temporary government servant. Therefore, the respondents rightly relied on Rule 5 of the Rules. To the extent those rules allowed the respondent authorities to dispense with the services of the original petitioner without regular disciplinary proceedings, there is no error in the proceedings.

15. Having heard learned counsel for the parties and having perused the record, we find that the original petitioner was engaged on probation for a period of two years on the post of Junior Field Assistant (Safaiwala) with effect from 9.6.2015. That initial period of probation completed on 9.6.2017. No document or communication arose up to that stage as may have led the respondents to form any opinion or to pass any orders to dispense with the services of the original petitioner, being not satisfactory. Instead, the respondents allowed the original petitioner to continue on probation after completion of initial period of two years i.e. beyond 9.6.2017. For that reason, it has to be inferred in law that

the respondent authorities acted in accordance with Clause 2 of the appointment letter dated 23.10.2015 and treated the probation period of the original petitioner to have been extended beyond 9.6.2017. That they clearly could do up to 9.6.2018.

16. Consequently, it must be recognized in law that the original petitioner was serving as probationer on 28.8.2017. Resultantly, his status was that of a temporary government servant. To that extent, we are not impressed by the submissions advanced by learned counsel for the petitioner that the original petitioner was confirmed in service on 28.8.2017. Unless a positive order had been passed to confirm the original petitioner in service, that conclusion in law did not arise. Neither under extant service rules nor under any general principle in law, the services of a probationer were confirmed on deemed basis.

17. At the same time, the power to dispense with the service of a probationer under Rule 5 of the Rules is not to be exercised arbitrarily or whimsically.

18. The said rule only gives the authorities a power to dispense with the services of a temporary government servant without following regular procedure that otherwise applies to a government servant appointed regularly or on a permanent basis. The circumstances when such powers may be exercised are not specified under the said Rules. Without intending to lay down the circumstances when such power may be exercised, the facts of the present case are glaring. As noted above, the original petitioner developed serious medical condition as was reported to his superiors by communication dated 7.8.2017 and was confirmed upon medical opinion of the CMO dated 24.8.2017. The Deputy Chief Engineer had reported to the Deputy Director on 7.8.2017

that the original petitioner had lost control over his locomotor abilities to the point he was lacking in body balance and was unable to control his limbs. It was further reported, for that reason, he was not able to attend his duties and was absenting himself. The medical opinion states that the original petitioner was found suffering from epilepsy and was alcoholic. However, no other material or test report appears to have been made part of that medical opinion. Thus, a subjective opinion as to alcoholism is seen to have been made by the authorities. In any case, the medical board further observed that the medical condition of the original petitioner developed after the death of his father and that he may suffer a epileptic attack at any moment making him lose control over himself and knowledge of the event.

19. Once such material existed on record, it is difficult to accept that the respondents washed their hands of the original petitioner and chose to leave him in the lurch to deal with his illness, without any support or efforts made by them to help him deal with his condition.

20. We are conscious that the respondents were not obligated to confirm the original petitioner in service and that they may be right in extending his probation as the original petitioner was not found to have completed two years of probationary service, satisfactorily. At the same time, there was not enough material brought on record by the respondents to establish that the non satisfactory performance of the original petitioner was attributable to his voluntary behaviour. The medical opinion submitted by the CMO is inconclusive as to that. It records that the original petitioner was suffering from epilepsy from the time of occurrence of his father's death and at the same time, literally in one word it has been recorded that he was also an alcoholic. Thus, in absence of cogent

material to reach the conclusion that the original petitioner had voluntarily not performed satisfactory service, he may have been dealt with too harshly.

21. As to the relief that may be granted in such a case, we find that the original petitioner is unfortunately dead. He having succumbed to his medical ailment.

22. Therefore, in the peculiar facts of the present case, we provide that the family of Surendra Kumar may remain entitled to make a fresh application for grant of compassionate appointment in lieu of the death of Surendra Kumar.

23. Here, we also note that not too much time has passed. Surendra Kumar died on 21.01.2011. In his place, the original petitioner remained engaged till 28.8.2017. Barely six years have passed since then. During that period, the original petitioner and now his legal representatives have been actively pursuing litigation.

24. Accordingly, if fresh application for grant of compassionate appointment is made within a period of one month from today before respondent no. 1, the same may be dealt with and decided compassionately keeping in mind the observations made above, as expeditiously as possible, preferably within a period of three months from the date of application being made.

25. Accordingly, the present petition stands **allowed** in the above terms.

Order Date :- 13.12.2023/Faraz

(Shiv Shanker Prasad, J.) (S. D. Singh, J.)