

Central Administrative Tribunal, Principal Bench

Original Application No.1067 of 2001

New Delhi, this the 14th day of February, 2002

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. S.R. Adige, Vice Chairman(A)

Shri Vijay Prakash Srivastava
S/o Shri K.D. Srivastava
The Copyright Information Officer
Ministry of Human Resources Development
Department of Education,
Shastri Bhawan, New Delhi

And:

R/o RZ/D-14, Om Vihar
Near Santoshi Mata Mandir,
Uttam Nagar,
New Delhi-59

- Applicant

(By Advocate: Shri Naresh Kaushik)

Versus

Union of India
Through the Secretary
Ministry of Human Resources Development
Department of Education,
Shastri Bhawan, 'C' Wing,
New Delhi

- Respondent

(By Advocate: Shri Anil Singal, proxy for Mrs. P.K. Gupta)

O R D E R (ORAL)

By Hon'ble Mr. S.R. Adige, VC(A)

Applicant impugns respondents' order dated 23.1.2001 (Annexure-1) and seeks a direction to the respondents to reinstate him with all consequential benefits.

2. We have heard Shri Naresh Kaushik for the applicant and Shri Anil Singal for the respondents.

3. Pleadings reveal that applicant is a permanent employee of the Govt. of NCT of Delhi and was holding his lien on the post of Assistant Public Prosecutor (in short 'APP') under GNCT when Union Public Service Commission (in short 'UPSC') invited applications for the post of

Copyright Information Officer (in short 'CIO') under the Ministry of Human Resources Development, Department of Education vide advertisement dated 23/29.10.93 (Annexure -2). Applicant applied for the aforesaid post and was offered appointment to the said post vide memo dated 22.4.96 (Annexure-6). In the aforesaid memo, it was specified that the post was temporary and applicant's confirmation in the grade will be considered in accordance with the rules in force from time to time. The other material feature in the aforesaid appointment offer was *Clause 2(iv) namely that* ~~the~~ the period of probation was for one year from the date of appointment, which could be extended at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority would render the appointee liable to be discharged from service.

4. Applicant was relieved from the post he was holding under GNCT of Delhi on 12.8.96 and joined the aforesaid post of CIO on 14.8.96. However, he continued to retain his lien in the parent department.

5. Applicant contends that after joining as CIO, he was being treated as an unwanted guest in the office and was not being assigned any work attached to the said post. He made representations to respondents in this regard but despite that, the work pertaining to the post of CIO was not assigned to him and, on the contrary, he was asked to handle work relating to registration of copyright/change etc. He contends that this situation continued for quite

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some time and meanwhile, neither was his probation period extended by any order nor was he advised that he was not doing his work properly or there were any shortcomings in his performance, to enable him to improve himself. All of a sudden, he was visited with the impugned order dated 23.1.2001 terminating his services with immediate effect in terms of clause 2(iv) of his appointment order.

6. Respondents in their reply challenge[^] the OA. They state that applicant was appointed as CIO w.e.f. 14.8.96 in a temporary capacity and as per the terms and conditions of his appointment, he was to remain on probation for a period of one year which was extendable and applicant had accepted the terms and conditions while taking appointment. Consequent upon the failure of the applicant to complete the period of probation successfully, his services were terminated by the competent authority. It has been contended that applicant's probation period of one year could have been extended for a further period of one year as per para 1 (viii) of Chapter 19 entitled "Probation on Appointment" in Swamy's Manual on Establishment and Administration, Eighth Edition 2000 published by Nathan and Company, Chennai. It is contended that well before the extended period, a DPC had met on 6.7.98 and found on the basis of the assessment report on applicant's work and performance, that he did not meet the requirements of the job. The DPC, therefore, recommended that his probation period be terminated and his services from the Department of Education also be terminated forthwith. It is stated that the proceedings of the DPC

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were sent to UPSC in July, 1998 for approval to the termination of applicant's probation. UPSC thereupon asked for certain documents and clarifications which were furnished to them. However in August 1999, the Commission intimated that consultation with UPSC for confirmation had been dispensed with vide notification dated 25.5.99 and advised the respondent to consult the DOPT. The matter was then taken up with DOPT, culminating in the impugned order dated 23.1.2001. Meanwhile it is contended that applicant's lien on the post held by him in his parent department in GNCT Delhi was being extended from time to time and on that basis, it is contended that applicant's probation was also being extended from time to time, of which he was well aware.

7. Respondents also deny that the disciplinary proceedings initiated against the applicant on the allegation of forgery and improper processing of the cases of two private parties for allotment of Registration Certificates had anything to do with the issue of impugned order dated 23.1.2001 terminating applicant's services, because they point out that the aforesaid alleged misconduct came to light only on 11.2.99 while the DPC had found the applicant unfit for continuation in Govt. service in July, 1998 itself.

8. Respondents further deny that applicant was not given the duties and responsibilities of the post of CIO to which he had been appointed, but was instead given some other work while he had been found unfit for the job

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of CIO.

9. We have considered the matter carefully.

10. In chapter 19 entitled "Probation on Appointment", to which a reference has already been made, detailed instructions have been laid down as to the manner in which probationary period should be regulated. Para 1(ix) of the aforesaid chapter 19 is extracted below:

"(1)(ix) The decision whether an employee should be confirmed or his probation extended should be taken soon after the expiry of the initial probationary period, that is ordinarily within six to eight weeks, and communicated to the employee together with the reasons in case of extension. A probationer who is not making satisfactory progress or who shows himself to be inadequate for the service in any way should be informed of his shortcomings well before the expiry of the original probationary period so that he can make special efforts at self-improvement."

11. Aforesaid paragraph makes it clear that the decision whether an employee should be confirmed or his probation extended, is required to be taken soon after the expiry of initial probationary period and communicated to the employee together with the reasons in cases of extension. A probationer who has not made satisfactory progress or who shows himself to be inadequate for the service in any way, should be informed of his shortcomings well before the expiry of the original probationary period so that he can make special efforts at self-improvement. No materials have been shown to us by the respondents to establish that applicant was ever made aware of his shortcomings well before the initial probationary period

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expired to enable him to improve himself or that reasons were communicated to him as to why his probation was being extended. Furthermore in para 3 of aforesaid Chapter 19, the department is ^{enjoined upon} ~~enjoying the power~~ to communicate to the probationer the decision to confirm him or to extend the period of probation. No doubt, till such time as specific orders of confirmation or satisfactory completion of probation are issued to a probationer, he should be deemed to have continued on probation, but by the same token, respondents are required to inform the probationer as to the reasons why they are extending his probation and bring to his notice the shortcomings that they have found in his work and conduct to enable him to improve himself.

12. During the course of hearing, Shri Singal asserted that the DPC had considered certain assessment reports of the applicant on the basis of which they had concluded that he was unfit for retention in service but even if such assessment reports were maintained by the respondents, there is nothing on record to show that the contents of these assessment reports were brought to the applicant's notice by way of informing him to make special efforts of self-improvement.


13. In the light of the foregoing discussion, we have no hesitation in holding that by not informing applicant of the reasons for extension of his probation and by not bringing to his notice his shortcomings well before the expiry of the original probationary period and even during the course of extended period, no opportunity was

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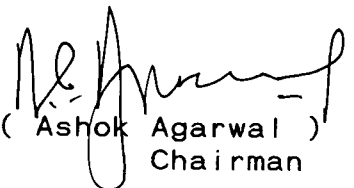
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given to him to improve himself and under the circumstances, respondents have not followed their own instructions regarding Probation on Appointment.

14. In the result, the impugned order dated 23.1.2001 cannot be legally sustained. The OA, therefore, succeeds and is allowed to the extent that the impugned order dated 23.1.2001 is quashed and set aside. Applicant would be entitled to be placed in the same position as he was before the impugned order dated 23.1.2001 was passed. No costs.


(S.R. Adige)
Vice Chairman(A)

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(Ashok Agarwal)
Chairman