

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(16)

O.A.No. 987 /1997

Date of Decision: 4 - 8 - 1998

Shri Lakhman Lal Meena

APPLICANT

(By Advocate Shri V.S.R. Krishna with R.K. Shukla)

versus

Union of India & Ors.

RESPONDENTS

(By Advocate Shri Madhav Panikkar)

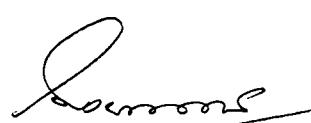
CORAM:

THE HON'BLE SHRI T.N. BHAT, MEMBER (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER (A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER
BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member (A)
4.8.1998

Cases referred:

1. State of Punjab V. Dharam Singh AIR 1968 SC 1201
2. R.K. Bharati V. UOI & Anr. 1990 (13) ATC 557
3. Kedar Nath Bahi V. State of Punjab & Ors. AIR 1972 SC 353
4. Tarsem Lal Verma V. UOI & Ors. 1997 (9) SCC 243
5. R.L. Gupta V. UOI 1988 (2) SCC 250
6. State of Gujarat V. Akhilesh C. Bhargav 1987 (4) SCC 482
7. Jai Kishan V. Commissioner of Police & Anr. 1995 (2) SLR 706
8. P.G. K. Pillai V. UOI & Ors. 1995 (29) ATC 753
9. S. Sukhbans Singh V. State of Punjab 1962 SC 1711
10. State of UP V. Akbar Ali Khan AIR 1966 SC 1842
11. Q.P. Maurya V. UP Sugar Factory Federation, Lucknow & Ors. 1986 SCC Bhai (L&S) 421
12. Dharmji Bhai Ramji V. State of Gujarat 1985 (1) SLR 595

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA No. 987/97

(17)

New Delhi, this the 4th day of August, 1998.

Hon'ble Sh. T.N. Bhat, Member (J)

Hon'ble Sh. S.P. Biswas, Member (A)

Sh. Lakhman Meena,
R/o 1445, Lodhi Complex,
New Delhi-3. Applicant

(through Shri VSR Krishna with Shri R.K. Shukla)

versus

1. Union of India through
the Director General,
Directorate General of Inspection,
Customs & Central Excise,
I.P. Estate, New Delhi.
2. The Dy. Director (A),
Directorate General of Inspection,
Customs and Central Excise,
I.P. Estate,
New Delhi. Respondents

(through Shri Madhav Panikkar, Advocate)

ORDER

Hon'ble Shri S.P. Biswas, Member (A)

We have gone through the records of the case carefully and have heard the learned counsel for both the parties at length. On the basis of facts and arguments advanced before us, the following questions fall for our consideration:-

(i) Whether the impugned order of termination dated 13.3.96 by which the services of the applicant have been terminated could be considered as termination simpliciter and be held valid in the eyes of law?

(ii) Since nothing adverse has been communicated to the applicant before the date of expiry of 2 years period of probation, can it be said that the applicant has satisfactorily completed the probationary period and was entitled to have the benefit of "deemed confirmation"?

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(iii) Whether in the absence of any stipulation in the appointment letter or in the absence of positive decision of confirmation, was it open to the respondents to presume that the applicant continues to be still in the probationary period beyond two years and, if not, what would be the effect on the status of the applicant after the expiry of the said period of probation?

2. Two opposing points of view have been advanced before us - one by the learned counsel for the applicant to the effect that having completed more than double the period of probation, the applicant must be deemed to have become permanent and termination of the applicant's services, by invoking the provisions of Rule 5(1) of CCS (CCA) Rules, 1965, is illegal and invalid. A view, opposite to the former, has been pressed in by the learned counsel for the respondents in that though the applicant continued to be on probation even after completion of second year the termination is one of simpliciter and that this is not a case that could be tested on the anvil of Article 311(2) of the Constitution.

3. Briefly stated the facts of the case are as under:-

On a requisition from the Employment Exchange, the applicant joined the post of Junior Hindi Translator on 4.9.90 on the strength of Annexure A-2 order. The applicant, who belongs to Scheduled Tribe community, claims to have worked satisfactorily under the respondents and was never issued a chargesheet. Immediately after the receipt of the impugned order he preferred a representation that he had been appointed on a permanent post and had successfully completed 2 years of probation by 4.9.92. That even after the receipt of

the notice dated 11.4.96, the applicant was allowed to continue working in the office and he submitted a leave application which was duly accepted. Yet suddenly on 16.7.96 the respondents illegally did not allow him to sign attendance register. The applicant claims that he had worked and discharged his responsibilities till 16.7.96.

4. Shri V.S.R. Krishna, learned counsel for the applicant, drawing support from the decisions of the Hon'ble Supreme Court and the Tribunal in the cases of State of Punjab vs. Dharam Singh (AIR 1968 SC 1201) and R.K. Bharati Vs. U.O.I.&Anr. (1990 (13) ATC 557), argued that the applicant had put in more than six years of service and the termination was on the basis of misconduct without holding an enquiry, besides being legally vitiated on account of its retrospective application. Because the applicant had successfully completed two years of probation on 4.9.92, CCS(Temporary) Rules will not be applicable in his case.

5. Contending that the applicant still continued to be under probation, Shri Madhav Panikkar, learned counsel for the respondents submitted that the termination was strictly on the unsatisfactory performance of the applicant as probationer. It was submitted that the applicant applied for station leave permission for visiting his home town in Rajasthan for some private work which was not granted. The applicant absented from duties with effect from 5.9.94 to 4.3.96 without any authority. As per the learned counsel, the respondents' action cannot be faulted in terms of the law laid down by

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the Hon'ble Supreme Court in the case of Kedar Nath Bahl Vs. State of Punjab and Others (AIR 1972 SC 353 (Vol. 59 C 166) and Tarsem Lal Verma Vs. U.O.I. & Ors. (1997(9) SCC 243).

6. Both the parties admit that the applicant was initially on probation for a period of two years. It is also not in dispute that the order of appointment does not specifically prohibit/restrict extension of probation after the completion of normal period of two years. Nor does it mention that the probationer would get automatically confirmed on the expiry of the said period.

7. We do not find any law laid down on the subject. But there are statutory provisions, stipulations in the Recruitment (Promotion) Rules or mention of relevant conditions in appointment letters. All these combined with administrative instructions ^{govern} ~~would~~ such cases. It would be necessary for us to bring out the salient features of administrative instructions as well as norms/principles laid down by Courts/Tribunals applicable in such cases. Swamy's Complete Manual on Establishment and Administration for Central Government Offices indicate certain recommendations for adoption in respect of services controlled by various Ministries with regard to appointment and probation in various services. It refers to Ministry of Home Affairs's O.M. dated 15.4.89 laying down general principles and it has been indicated that fresh enterant to a service as well as those promoted should be kept on probation for a period of two years to adjudge the performance of an officer for a higher service. The said O.M. also mentions that the

date from which confirmation should be given effect to is the date following the date of satisfactory completion of the prescribed period of probation or the extended period of probation, as the case may be. The decision to confirm the services of a probationer or to extend the period of probation, whatever it is, should be communicated to the probationer in reasonable period of 6-8 weeks. Confirmation of the probationer after completion of period of probation is not automatic but is to be followed by formal orders. As long as no specific orders of confirmation or satisfactory completion of probation are issued to a probationer, such a probationer shall be deemed to have continued on probation.

8. The learned counsel for the applicant cited the case law pertaining to R.K. Bharati (supra) in support of his contention that the applicant, after having ~~been~~ completed double the normal period of probation has to be treated to have got the benefit of deemed confirmation. The decision in the case of Bharati proceeded on the basis of judicial pronouncements of the Hon'ble Supreme Court in the case of R.L. Gupta Vs. UOI. (1988(2) SCC 250; State of Gujarat Vs. Akhilesh C. Bhargav (1987(4) SCC 482 and State of Punjab Vs. Dharam Singh (AIR 1968 SC 1210). That was the case where the Tribunal concluded that instructions under SR 2(viii) of subsidiary Rules relating to probationer would be applicable. This is because there was no provision in the service rules of the applicant therein for extending the period of probation from time to time and that the competent authority was expected to ensure that the government servant is not kept on probation for more than double the

normal period, save in exceptional circumstances. Respondents therein felt that there were exceptional circumstances because of several disciplinary cases against the applicant during 1979-88 (applicant was appointed in 1978) but there was no disciplinary case against him during October, 1982 to April, 1983 and January to July, 1984 and yet no DPC was held by the respondents to consider the question of satisfactory completion of probation by the applicant. By the time that case came up before the Tribunal, 12 years had already passed and applying the ratio arrived at in the case of State of Gujarat V. A.C. Bhargav (1987) 5 ATC 167, which was, in turn, based on Dharam Singh's case (supra), the Tribunal held that the applicant must ~~be~~ be deemed to have been confirmed in the post of Assistant Editor in CWC on 21.10.88 when the impugned order of termination was made by the respondents therein.

9. It may be noted that even while examining the case of A.C. Bhargav (supra) the apex court contended that no order of extension was necessary to be made as the process of confirmation was not automatic and even if two years period as provided in Rule 2(1) has expired for the said IPS Officer, namely, Shri Bhargav, confirmation would not ipso facto follow and a specific order has to be made. The apex court ruled that because of 12(bb) of the Probation Rules, services of Bhargav could not be brought to an end by the impugned order of discharge.

10. It is in the background of the ratio arrived in the cases of Dharam Singh, R.L. Gupta and Bhargav (supra) that the case of B.R. Bharati was decided by this

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Tribunal. The circumstances in the present case do differ particularly with reference to the provisions on probation incorporated in the service rules. B.R.Bharti's case is, therefore, distinguishable.

11. Learned counsel for the respondents cited before us the decision of the Hon'ble Supreme Court in Kedar Nath Bahl's case (supra) wherein it has been held that:

"Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of specified period, or there is a specific service rules to that effect, the expiration of the probationary period does not necessarily lead to confirmation".

12. In the other case of Tarsem Lal Verma cited by the learned counsel for respondents, the apex court held that "mere expiry of one year beyond the original two-year period of probation did not result in his automatic confirmation".

13. In the case of Shri Jai Kishan Vs. Commissioner of Police and Anr., 1995(2) SLR 706, the apex court was examining the case of the police officials who were on probation for a period of two years with provision that the competent authority could extend the said period but in no case the period of probation could be extended beyond three years in all. In this case it was found that the authority had power to allow a maximum period of three years of probation and instead of three years, the authority had given a long 5 years period so as to see

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whether the probationer has improved his performance. Since there is no satisfactory improvement, his probation was terminated and the applicant was removed from service. In the circumstances, the apex court held that they did not find any illegality or that the action taken by the respondents warranted ^{any} ~~any~~ interference.

14. We are of the opinion that in the absence of any statutory rule indicating that the period of probation cannot be extended beyond a specified period, the authorities would not be barred from extending the period of probation. In this behalf we may refer to a decision of the Principal Bench of CAT though it was not cited by the learned counsels. The said decision is reported in (1995) 29 ATC 753 P.G.K.Pillai v. UOI & Ors. In the said case, the applicant therein was appointed on 7.3.89. The appointment order indicated that he would be on probation for two years which could be extended at the discretion of the appointing authority if considered necessary. On 27.2.1992, the probation was extended upto 27.2.1993 and on 2.7.1993 another order was issued further extending probation period from 28.2.93 to 27.3.94. It was extended on account of pendency of a disciplinary case against him and one of the charges was of bigamy. In the said case on behalf of the applicant, attention was invited to Chapter XV at ~~page~~ 138 of Swamy's Compilation Manual which indicated a decision of Government of India to the following effect:

"while the normal probation may certainly be extended in suitable cases, it is not desirable that an employee should be kept on probation for years as happened occasionally at present. It is, therefore, suggested that, save for exceptional reasons, probation should

not be extended for more than a year and no employee should be kept on probation for more than double the normal period"

In the present case, the applicant's counsel would perhaps rely mainly on this part of the manual since the applicant has completed more than five years before the impugned order was passed.

15. The Division Bench in the said decision took the view that:

"A close reading of the aforequoted passage will indicate that even double the period of probation as indicated is not sacrosanct. It is provided therein that, for exceptional reasons, the period of probation may be extended even beyond the double period of probation. To put it on a practical level, according to the aforequoted passage, the period of probation of the applicant could be extended even beyond the period of four years for exceptional reasons. We may note at this stage that it is not the requirement of the Government order that the exceptional reasons should be recorded in the order whereby the period of probation is being extended."

16. We are in respectful agreement with the view taken in the said decision and applying the ratio laid down to the facts of the present case and especially the explanation given in the pleadings of the respondents we are not persuaded to hold that after expiry of the initial period of 2 years probation no extension could have been made particularly in the absence of any negative statutory provision restricting the discretion of the appointing authority to extend the period of probation. Even in the decision of P.G.K.Pillai (supra) the period of probation had been extended well after the date of expiry of the probation period.

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17. The learned counsel for the respondents also invited our attention to a decision of the Hon'ble Supreme Court in S.Sukhbans Singh v. State of Punjab 1962 SC 1711. In the said case, the following observation, which is relevant for our purpose, has been made:

"A probationer cannot, after the expiry of probationary period, automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide that where a probationer is not reverted by the Government before the termination of his period of probation he continues to be a probationer but acquires the qualification for substantive permanent appointment".

18. In another decision in State of UP v. Akbar Ali Khan, AIR 1966 SC 1842, the following observation was made:

"The respondent did not cease to be a probationer after expiry of the probation period. Without any specific order of confirmation, he continued as a probationer only and acquired no substantive right to hold the post".

19. We may reiterate the relevant observation made by the Hon'ble Supreme Court in its judgement in the case of Dharam Singh (supra):

"Where the Service rules fixed a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of maximum period of probation without an expression, he cannot be deemed to be continued in that post as a probationer by implication. The reason is that such an implication is negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee on completion of the maximum period has been confirmed in the post by implication...."

20. It may be observed that the Supreme Court in that case was considering the position under the rules which prohibited extension of the probationary period. In view of that rule and the fact that the probationer in that case was allowed to ^{be} confirmed in the post even after completion of the maximum period a presumption of implied confirmation of the probationer in that post was raised. Another decision in the same context where regulation 17 prohibited continuation of an employee on probation for a period of more than 2 years was held to result in the employee standing confirmed by implication after expiry of 2 years probationary period. The said decision is reported in 1986 SCC(L&S) 421 O.P. Maurya V. UP Sugar Factory Federation, Lucknow & Ors. Reference may be made to other two decisions in which in the light of the Rule prohibiting extension of the period of probation an inference of implied confirmation was raised by the Hon'ble Supreme Court in Dharmji Bhai Ramji Bhai V. State of Gujarat 1985: (1) SLR 595 and Amit Singh V. UOI & Anr. 1978 (2) SLR 453.

21. Respondents herein have produced the materials which shows that the applicant's services have not been terminated as a measure of punishment casting a stigma because of some specific charges but on consideration of applicant's overall performance and some inaction on his part. It has been mentioned that applicant absented himself from duty for the periods as mentioned below:

5.9.94 to 31.12.94	..	118 days
1.1.95 to 31.3.95	..	90 "
1.4.95 to 30.6.95	..	91 "

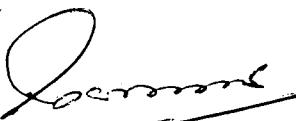
1.7.95 to 31.12.95	..	184	"
1.2.96 to 28.2.96	..	28	"
29.2.96 to 4.3.96	..	5	"

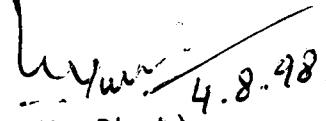
22. Only on 8.4.96 applicant came to the office, and submitted his joining report after furnishing all the medical certificates in a bunch. In view of the factual position aforesaid, the whole premise on which learned counsel for applicant proceeds that the order of termination casts a stigma on the applicant is unfounded. A perusal of the materials placed before us indicate that respondents have taken adequate steps to ensure regular attendance of the applicant for the purpose of official duty but the efforts proved fruitless. On consideration of the relevant factors, respondents came to the conclusion that in view of the overall performance of the applicant, he does not deserve to be confirmed or retained in service. We do not find any malafide in the same as contended by the applicant's counsel. Applicant has not placed on record any document to show that an order of confirmation was passed. In fact, by several communications issued by the respondents, applicant was adequately informed of the need for returning back to his regular duty. Thus, the stand of the applicant that his service is deemed to have been confirmed after the expiry of two years beyond the normal period of probation has no substance.

23. In our opinion, it is well settled in a catena of cases decided by the Hon'ble Supreme Court that unless rules provide/or restrict, on mere completion of probation period, a person does not stand confirmed against the said post. There has to be a declaration that he has satisfactorily completed the probation and

that he is confirmed against a substantive post. Until then, he continues to be a probationer. We are satisfied that in the absence of any statutory rule or specific mention in the offer of appointment or in Recruitment Rules, as in the present case, such matters would be governed by the provisions in various OMs issued by the Ministry of Home Affairs from time to time. The OMs provide for extension of probationary period even beyond the extent of double the normal period of probation in exceptional circumstances. The applicant's case will get covered under these provisions.

24. In the light of the discussions herein above, we do not find any merit in the application. The OA fails and is accordingly dismissed but in the circumstances, without any order as to costs.


(S.P. Biswas)
Member (A)


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(T.N. Bhat)
Member (J)

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