

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1807 of 1994

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DATE OF DECISION 10th August, 1999.

Shri Ishwar Lal

....Petitioner

Shri B.S. Mainee

....Advocate For the
Petitioner(s)

VERSUS

Union of India & Anr.

....Respondent

Shri V.S.N. Krishna

....Advocate For the
Respondents.

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The Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (C)
The Hon'ble Shri R.K. Ahooja, Member (A)

1. To be referred to the Reporter or not? ~~YES~~ YES
2. Whether it needs to be circulated to other
Benches of the Tribunal? ~~No.~~ NO

CRU
(V. Rajagopala Reddy)
Vice-Chairman (C)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1807/94

New Delhi this the 10th day of August, 1999.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

Shri Ishwar Lal,
S/o Shri Lakhi Ram,
R/o Plot No.108 (WS),
Church Road,
New Delhi.

...Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India through:

1. The Joint Secretary (Training)
and Chief Administrative Officer,
Government of India,
Ministry of Defence,
C-II Hutments, DHQ,
New Delhi-110011.
2. The Dy. Chief Administrative
Officer (P-2),
office of the Joint Secretary (Trg.),
and CAO, C-II Hutments,
DHQ PO:
New Delhi-110011.

...Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R

By Reddy, J.

The applicant submits that he was appointed as an Assistant Map Curator in the office of the Deputy Chief Administrative officer, Army Headquarters at Delhi in 1990 and was put on probation for a period of two years. The probation was, however, extended by one year, which expired on 25.6.93. Further, there was no extension of the period of probation. The services of the applicant were terminated by the impugned order dated 9.12.93 w.e.f.

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10.1.94 (Annexure A-1), giving him one month's notice. The impugned order was passed under sub rule (1) of Rule 5 of C.C.S. (Temporary Service) Rules, 1965 (for short, the 'Temporary Service Rules'). A copy of the said order is filed at Annexure R-1. Questioning this order the applicant approached this Tribunal in this OA. It is contended by the learned counsel for the applicant that after the expiry of the initial period of probation of two years, which is the maximum period of probation prescribed under the Rules of recruitment, the services of the applicant should be deemed to have been confirmed and, thereafter, the applicant could not be removed from service under the Temporary Service Rules. 11

2. The respondents have filed the counter in which it was stated that in view of the several incidents of absence from service etc. punitive action was taken against the applicant. His services were, therefore, found unsatisfactory. Hence, his services were terminated under the Temporary Service Rules as he was not confirmed. He submits that as per the appointment order of the applicant dated 2.7.90 the period of probation is liable to be extended/curtailed by the competent authority and that there was no prescription under the relevant recruitment rules prescribing the maximum limit of the probation for the post of Assistant Map Curator. It is also argued that as the applicant's

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services have to be confirmed by the DPC and unless an order of confirmation was passed, on the basis of the recommendation made by the DPC, applicant's services cannot be treated to have been confirmed and until such confirmation is done the applicant continues to be a temporary employee. 12

3. It is, therefore, necessary to consider whether the applicant could be removed under the Temporary Service Rules. Initially, on his appointment in 1990, the applicant was placed on probation for a period of two years. In the order of appointment itself it was made clear that the period of probation might be extended at the discretion of the competent authority. Even from the terms of appointment contained in the memorandum dated 25.6.90, it is manifest that the period of probation is liable to be extended or curtailed by the competent authority. Accordingly, the period of probation was extended by one more year in 1992. It is true that no order extending probation has been passed thereafter.

4. Since the applicant's services were terminated under Rule 5 of the Temporary Service Rules, the first question that falls for consideration is whether the applicant could be said to have completed his probation period.

5. In **Wasim Beg v. State of U.P. & Ors.** (1998) 3 SCC 321, Sujata Manohar, J. speaking for the Bench, having elaborately discussed the effect

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of the Recruitment Rules in various situations on the question whether an employee after the end of the probation period automatically gets confirmation in the post or whether an order of confirmation was necessary in all cases, observed:

"There are broadly two sets of authorities of this Court dealing with this question. In those cases where the Rules provide for a maximum period of probation beyond which probation cannot be extended, this Court has held that at the end of maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary....."

"However, even when the Rules prescribe a maximum period of probation, if there is a further provision in the Rules for continuation of such probation beyond the maximum period, the Courts have made an exception and said that there will be no deemed confirmation in such cases and the probation period will be deemed to be extended. In this category of cases we can place *Samsher Singh v. State of Punjab* (1974) 2 SCC 831) which was the decision of a Bench of seven Judges where the principle of probation not going beyond the maximum period fixed was reiterated but on the basis of the Rules which were before the Court, this Court said that the probation was deemed to have been extended. A similar view was taken in the case of *Municipal Corporation v. Ashok Kumar Misra* (1991) 3 SCC 325). In *Satya Narayan Athya v. High Court of M.P.* (1996) 1 SCC 560) although the Rules prescribed that the probationary period should not exceed two years and an order of confirmation was also necessary, the termination order was issued within the extended period of probation. Hence the termination was upheld.

The other line of cases deals with Rules where there is no maximum period prescribed for probation and either there is a Rule providing for extension of probation or there is a Rule which requires a specific act on the part of the employer (either by issuing an order of confirmation or any similar act) which would result in confirmation of the employee. In these cases unless there is such an order of confirmation, the period of probation would continue and there would be no deemed confirmation at the end of the prescribed probationary period."

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In the present case the Rules provide for a period of two years of probation. But the Rules do not provide for any maximum period of probation beyond which the probation could not be extended. Hence, in the appointment order it had been provided that the probationary period could be extended. Hence, the two years' period should be taken as the ordinary period, initially a temporary employee should be placed. In this context it is important to notice about the procedure for confirmation. Under the Recruitment Rules, there is a provision for confirmation which shall be on the basis of the recommendation of the DPC. Unless a DPC is convened and it found the employee fit to be confirmed and an order of confirmation was passed, it cannot be said that an employee was confirmed and his services were regularised. The contention of the learned counsel for the applicant that he should be treated as confirmed by a deeming fiction, cannot, therefore, be accepted. The learned counsel for the respondents cited **Dr. Amritlal Dharshibhai Jhankharia v. State of Gujarat** (1998) 8 SCC 767). It was also a case where there was no order of confirmation after the completion of the period of probation and that there was no provision in the relevant rules therein providing for automatic confirmation on completion of two years probation period. It was, therefore, held that unless there was an order of confirmation a temporary employee cannot be treated as if he was holding a permanent post on the expiry of the

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period of probation. Since the above two decisions are the latest decisions on the issue, rendered by the Supreme Court and the present case is squarely covered by the ratio laid down by the Supreme Court, we deem it not necessary to go into the earlier decisions cited by the learned counsel for the applicant on this aspect. In fact the decision, **The State of Punjab v. Dharam Singh**, AIR 1968 SC 1210 was considered by the Supreme Court in the above case. We, therefore, hold that since no order of confirmation was passed confirming the services of the applicant, ~~he~~^{✓ applicant} cannot be treated as holding the permanent post and the impugned order cannot be said to be invalid.

6. It is next contended by the learned counsel for the applicant that unless the employee was intimated about the unsatisfactory performance of his services, the applicant cannot be terminated. It was also argued that the order was punitive and it casts a stigma against the applicant, hence an enquiry should have been held before passing it. The learned counsel cited **Dr. Mrs. Sumati P. Shere v. U.O.I. & Ors.** (1989) 11 ATC 127, **Chandra Kumari v. Union of India**, ATR 1992 (1) 667, **Smt. Manorma Devi v. U.O.I. & Ors.** 1994 (1) ATJ 576 and **Santosh Kumar Yadav v. The Dy. Chief Accounts Officer, N.E. Rly & Ors.** 1990 (2) ATR 466 in support of his above contention. But in the present case

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this question would not arise. It is clearly stated in the counter affidavit that on allegations of misconduct against the applicant regarding unauthorised absence etc. disciplinary proceedings were initiated and the disciplinary authority found him guilty of unauthorised absence on certain dates and imposed upon him a minor penalty of reduction of pay by one stage. The applicant was again involved in a criminal case and he was placed under suspension as per the relevant rules w.e.f. 24.9.92. The suspension was, however, revoked on 16.8.92. Taking into consideration the above unsatisfactory performance, the applicant's services were finally terminated by the impugned order. It is, therefore, not a case of not intimating the applicant about his unsatisfactory performance. The observations made by the Supreme Court in **Ganganagar Zila Dugdh Utpadak & Sahkari Sangh Ltd. & Anr.** JT 1999 (5) SC 1 in similar circumstances may be ~~seen~~ ^{seen}. It was contended therein that the respondents services could not be terminated without following the procedure of holding an enquiry as the order casts a stigma. Setting aside the judgement of the Division Bench of the High Court the Supreme Court held:

"5. In our opinion the Division Bench of the High Court was not correct in the conclusion which it arrived at. It is not in dispute that when the order dated 30th November, 1994 was passed, the respondent was still on probation. The reason for passing of the said order appears to be the absence of the respondent from duty. In the order of appointment, it was clearly stipulated that the respondent's services could be terminated during the probationary period if the services were unsatisfactory. When judging the

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performance of a person if the services are terminated during the period of probation, obviously there has to be a reason for such termination. If the services are terminated during the probationary period without any reason whatsoever, it is possible that such an order may be impugned on the ground that it has been passed arbitrarily. On the other hand, when there is a reason for terminating the services during the probationary period and the order terminating services is worded in an innocuous manner, we do not see any force in the contention that such an order has to be regarded as by way of punishment."

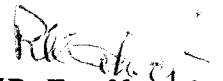
The applicant in the present case is also a probationer and no stigma was cast by the impugned order, as ^{it} ~~he~~ was termination, simpliciter. The respondents had made it clear that in view of the earlier incidents wherein a thorough enquiry was conducted and the applicant was punished, the impugned order was passed. In the circumstances we do not find any substance in any of the contentions.

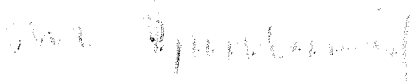
8. It is stated in the Annexure A-2 which was issued by the Administrative Officer in response to the representation made by the applicant that the appeal filed by the applicant was already rejected by the appellate authority. The order of the appellate authority, has, however, not been filed. The applicant filed only the order of the Administrative officer dated 24.2.94. This order, therefore, cannot be said to be the order of the appellate authority, hence no arguments can be advanced on the basis of this order stating that

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the appeal was dismissed by one line order. In the circumstances this contention also fails. The OA is accordingly dismissed. In the circumstances no costs.


(R.K. Ahooja)
Member(A)


(V. Rajagopala Reddy)
Vice-Chairman(J)

'San.'