

Central Administrative Tribunal
Principal Bench, New Delhi

✓

Regn. No. OA-2045/88

Date: 28-4-89

Shri R.K. Bharati

.... Applicant

Versus

Union of India & Another Respondents

For the Applicant Shri Umesh Mishra,
Advocate

For the Respondents Shri P.H. Ramchandani,
Sr. Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.)
Hon'ble Shri S.P. Mukerji, Vice-Chairman(Admn.).

1. Whether Reporters of local papers may be allowed to
see the Judgement? *Yes*

2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who has been working as Assistant
Editor, Bhagirath Journals, Central Water Commission
(C.W.C.), filed this application under Section 19 of the
Administrative Tribunals Act, 1985, praying for the
following reliefs:-

(a) to declare that he has attained the status
of a regular and permanent employee and he
is deemed to have been regularised for
all purposes; and

(b) to set aside the impugned order of termination
of his service dated 21.10.1988.

2. The facts of the case in brief are as follows.

The applicant was appointed as Assistant Editor, Bhagirath
(Hindi) in the Central Water Commission under the Ministry
of Water Resources in April, 1978. The letter of appoint-
ment, which is set out in Annexure 'A' to the application,
stipulates, inter alia, as follows:-

"On the recommendations of the Union
Public Service Commission, Chairman, Central
Water Commission, hereby offers Shri R.K.
Bharti, the post of Assistant Editor (Bhagirath-
Hindi) in the Central Water Commission, in the

pay scale of Rs. 650-30-740-35-810-EB-35-880-40-1000-EB-40-2000, in a temporary capacity. His pay in the above scale will be fixed according to rules. He will also be entitled to draw such other allowances as are admissible to Central Government employees from time to time.

2.. The appointment of Shri Bharti will be subject to the following conditions:-

(i) The post is temporary but likely to continue indefinitely. He will be on probation for a period of two years from the date he takes over charge of the post.

(i) The appointment can be terminated on one month's notice on either side. The appointing authority, however, reserves the right of terminating the services of the appointee forthwith on or before the expiration of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

(iii) The appointment carries with it the liability to serve in the any part of India, Nepal and Bhutan.

(iv) Other conditions of service will be governed by the relevant rules and orders in force from time to time."

3. It will be noticed that one of the stipulations contained in the letter of appointment was that the applicant will be on probation for a period of two years from the date of appointment. This period expired in 1980. However, the probation period was extended for one more year. That period also expired. Thereafter, the respondents did not pass an order of extending his probation or confirming him in the post. The applicant has contended that, in the circumstances, he must be deemed to have been confirmed in the post and that he cannot be removed from service without complying with the principles of natural justice. After 1981, he claims to have acquired a right to hold the post. By the time of filing of his application, he had put in more than 10 years' service in the post of Assistant Editor.

Ar

....3...

4. The applicant had filed another application in this Tribunal (OA-141/86) in which he was granted relief that he should be given increment and arrears. As the respondents did not implement this order passed by the Tribunal, he filed a contempt petition during the hearing of which the Tribunal directed the Chairman of C.W.C. to appear in person. Ultimately, the order was implemented. The applicant has alleged that these proceedings were also responsible for the vindictive attitude towards the applicant as is evident by the impugned order of termination dated 21st October, 1988. The impugned order of termination reads as follows:-

"Whereas Shri R.K. Bharati was appointed on probation on a temporary post of Assistant Editor (Bhagirath-Hindi) and whereas his services during the period of probation, including the extended period of probation, have been found to be not satisfactory and that he has been considered as not suitable for retention in service, now therefore, I, M.A. Chitale, Chairman, Central Water Commission, hereby terminate the services of Shri R.K. Bharati, Assistant Editor (Bhagirath-Hindi) with effect from the date of issue of this order i.e. the 21st of October, 1988 (Afternoon) and further direct that in terms of Clause 2(ii) of the offer of appointment, Shri Bharati is entitled to claim a sum equivalent to his pay plus allowances for a period of one month at the same rate at which he was drawing them immediately before the termination of his service."

5. The applicant has also stated that he has filed another application before the Tribunal (OA-199/86) in which he is claiming that he should be appointed as Editor which carries a higher scale of pay. The said application is still pending.

6. The respondents have filed a counter-affidavit wherein they have defended the action taken by them and have refuted the allegations made by the applicant.

By way of preliminary objection, they have contended that the applicant has not exhausted the remedies available to him under the relevant service rules before approaching the Tribunal and, therefore, the application is not maintainable under Section 20 of the Administrative Tribunals Act, 1985. They have further contended that the services of the applicant have been terminated in terms of Clause 2(ii) of the offer of appointment and that he was still on probation and had not yet completed the same.

7. We have gone through the records of the case carefully and have heard the learned counsel for both the parties at length. The question for consideration is whether the impugned order of termination dated 21st October, 1988, whereby the services of the applicant were terminated, is legally in order. Two opposing points of view have been advanced before us - one by the learned counsel for the respondents to the effect that the applicant was still on probation and that the termination was one of simpliciter, and the other by the learned counsel for the applicant to the effect that having completed more than double the period of probation prescribed under the rules, the applicant must be deemed to have become permanent and that the termination was by way of punishment.

8. In this context, it is relevant to note that the applicant has worked as a Hindi Officer, Class II (Gazetted) in the Central Translation Bureau, Ministry of Home Affairs from 1972 to 1976, as Hindi Officer in the Central Water Commission from 1976 to 1978, and as Assistant Director (Bhagirath-Hindi) in the Central Water Commission from 1978 to October 1988. He has thus put in over 16 years in Government service. He has held these posts on temporary basis. He is presently of about 48 years of age. The effect of the impugned order of termination is to wipe out

his 16 years of Government service and to render him unsuitable for any other employment under the Government because of age bar.

9. In this context, we may refer to the provisions contained in Supplementary Rules relating to probationers. S.R.2(15) defines the expression "Probationer" to mean "a Government servant employed on probation in or against a substantive vacancy in the cadre of a department". On a review of all aspects of appointments on probation in various services, the Government of India have made certain recommendations for adoption in respect of the services controlled by the various Ministries, etc. (Vide Memo. No. 44/1/59-Ests. (A) dated 15th April, 1959 issued by the Ministry of Home Affairs). Instructions (i) and (viii) contained in the aforesaid Memo. are relevant in the present context. According to instruction (i), "Instead of treating probation as a formality, the existing powers to discharge probationers should be systematically and vigorously used so that the necessity of dispensing with the services of employees at later stages may arise only rarely". According to instruction (viii), "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 happens 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."

10. According to the above mentioned rule, it is not desirable that an employee should be kept on probation for years and it has been 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. Shri

Ramchandani, the learned counsel for the respondents,

laid emphasis on the words 'desirable' and 'suggested' in support of his contention that the above mentioned rule is only directory and not mandatory.

11. The respondents had considered the question of clearance of probationary period in respect of the applicant from 1980 onwards. Four DPCs held in October 1980, 1981-82, 19.2.1985 and 19.10.1988, did not recommend the satisfactory completion of probation by the applicant in view of the following vigilance/disciplinary cases initiated against him:-

- (i) In May 1979, a complaint was investigated regarding drawal of double payment of a sum of Rs.161.65 for the same work by the applicant for which a charge-sheet was issued to him on 11th April, 1980. A minor penalty of censure was imposed on him on 27th February, 1981.
- (ii) On 3.10.1979, investigation was made into a complaint against the applicant for claiming false LTC for the block year 1974-77. A charge-sheet was issued to him on 28th October, 1981 proposing imposition of a major penalty of reduction of pay by three stages from Rs.880/- for a period of one year with cumulative effect and the said penalty was imposed on him on 18th October, 1982. In addition to this, his name was also included in the list of gazetted officers of doubtful integrity maintained by the C.B.I. since 1982.
- (iii) In December 1980, investigation was made into a complaint made by the applicant against Shri V.D. Kulkarni, Director, regarding his anti-Hindi feelings, etc.

After detailed investigations, it was found that the allegation was baseless.

A recordable warning was issued to him on 12th May, 1982.

(iv) In September 1980, the applicant levelled certain allegations against the Section Officer, CM&V, and used derogatory language. This resulted in a recordable warning being issued to him on 10th June, 1980.

(v) In April 1983, the applicant sought to bring political pressure upon his superiors to further his interests in matters pertaining to his service in alleged violation of rule 20 of the C.C.S. (Conduct) Rules, 1964. A recordable warning was issued to him on 5.1.1984.

(vi) In January 1984, a complaint was investigated regarding certain manipulation of getting the C.R. of the applicant for the year 1982 to be written from a back date under some political influence/pressure, etc. On investigation, the complaint was found to be genuine and, accordingly, his C.R. for the year 1982 was cancelled and a certificate was recorded to that effect in his C.R. in 1984.

(vii) In March 1984, the applicant levelled certain allegations against his superiors. A charge-sheet

was issued to him on 18th July, 1984 for imposition of major penalty. After regular inquiry, a major penalty of reduction of pay by two stages from Rs.3050 to Rs.2,900 for a period of one year with cumulative effect was imposed on him on 14.10.1988.

(viii) In March 1984, investigation was made into a complaint regarding indulgence by the applicant in part-time job with a fortnightly magazine entitled 'Keshab Prayas' after giving false particulars. A charge-sheet was issued to him on 23rd February, 1987 and a minor penalty of censure was imposed on him in September, 1988.

(ix) In April 1984, a complaint was investigated regarding unauthorised absence of the applicant and lack of devotion to duty and acts unbecoming of a Government servant. On 31st May, 1984, a charge-sheet was issued to him. After the inquiry, a minor penalty of withholding of two increments was imposed on him in May, 1986.

(x) In August 1984, a complaint was received against the applicant regarding getting an article published in 'Jansatta' levelling certain allegations against the officials of C.W.C., etc. On 7.11.1985, a charge-sheet was issued to him proposing imposition of a major penalty. He was, however, exonerated vide order dated 29.9.1987.

(xi) On 24.3.1988, a charge-sheet was issued to the applicant for violation of Rule 20

2

of the C.C.S. (Conduct) Rules, 1964. A recordable warning was issued to him on 14.10.1988.

12. Adverse remarks in the C.Rs. had been communicated to the applicant on six occasions during the period from 1979 to 1987. The representations made by the applicant were rejected after consideration.

13. The respondents had conveyed to the applicant vide their memorandum dated 11th August, 1987 that clearance of probation will have to await the disciplinary cases pending against him.

14. The letter of appointment is silent on the question whether the applicant will be deemed to have been confirmed on the expiry of the period of two years of probation. There is also no provision that the competent authority may extend the period of probation from time to time. In such cases, the instructions made under S.R.2(viii) would be applicable and 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. According to the respondents, there were exceptional circumstances in the present case due to the various vigilance/disciplinary cases initiated against the applicant during the years 1979 to 1988, mentioned in para.11 above. It will, however, be seen that during October, 1982 and April, 1983, and January to July, 1984, no departmental proceedings were pending against the applicant. There is no explanation for not convening the D.P.C. during the said period to consider the question of satisfactory completion of probation by the applicant.

15. The question arises whether termination of the services of the applicant after he has put in ten years of service as Assistant Editor on the ground that he has not satisfactorily completed the period of probation, would be legally sustainable. We have not come across

any decided cases of the Supreme Court or High Courts wherein the termination of the services of a probationer in similar circumstances has been upheld. The learned counsel for the respondents had also not drawn our attention to any such ruling.

16. In the recent case of Shri R.L. Gupta, Vs. Union of India & Others, 1988 (2) SLJ 164 at 172, the Supreme Court has held that "to place a judicial officer, promoted to the Higher Judicial Service, on probation nearly nine years after his promotion as in this case, is a mere farce. Ordinarily, an officer should be on probation from the date of his appointment and if he is found unsuitable within the period of probation, he should be weeded out of service. Is it just and reasonable to place an officer on probation nearly nine years after his appointment and then turn him out of service if his services are found to be unsatisfactory during the period of probation which would fall in the tenth and eleventh year of his service in that cadre?"

17. In State of Gujarat Vs. Akhilesh C. Bhargav & Others, 1988 (2) SLJ 86, the Supreme Court dealt with the discharge of a probationer belonging to the Indian Police Service. He was appointed to that Service in July, 1969, but was discharged by an order issued in April, 1974. Rule 3(1) of the Indian Police Service (Promotion) Rules, 1954 provides, inter alia, that every person recruited to the Service shall be appointed on probation for a period of two years. At the relevant time, sub-rule (3) of the said Rules provided that the Central Government may, if it so thinks fit in any case of class of cases, extend the period of probation. In that case, there was no order of extension. It was contended that no order of extension was necessary to be made as the process of confirmation was not automatic and even if the two-year period as provided in Rule 3(1) has expired, confirmation would not ipso facto follow and a special order had to be made. Reliance had been placed on a series of decisions of the Supreme Court

which had held that an order of confirmation had to be made and confirmation would not follow automatically.

18. The Supreme Court, however, observed in the above case that the decision was somewhat different. While the probation rules prescribe an initial period of two years of probation, it did not provide any optimum period of probation. Administrative instructions were issued by the Ministry of Home Affairs, Government of India, on 16th March, 1973, indicating the guidelines to be followed in the matter. The Supreme Court referred to the following relevant portion of the administrative instructions:-

".....

(ii) It is not desirable that a member of the service should be kept on probation for years as happens occasionally at present. Save for exceptional reasons, the period of probation should not, therefore, be extended by more than one year and no member of the service should, by convention, be kept on probation for more than double the normal period i.e. four years. Accordingly, a probationer, who does not complete the probationers' final examination within a period of four years, should ordinarily be discharged from the service."

19. The Supreme Court observed that the Rules read with instructions create a situation as arose for consideration by the Constitution Bench in the case of State of Punjab Vs. Dharam Singh, A.I.R. 1968 S.C. 1210. In that case, the Supreme Court had interpreted the Punjab Educational Service (Provincialised Cadre) Class III Rules and found that there was a maximum limit of three years beyond which the period of probation could not be extended. When an officer appointed initially on probation was found to be continuing in service beyond three years without a written order of confirmation, the Supreme Court had held that it tantamounted to confirmation

20. In view of the above, the Supreme Court held in the case of Akhilesh C. Bhargav that the respondent stood confirmed in the cadre on the relevant date when he was discharged. For a confirmed officer in the cadre, the probation rules did not apply and, therefore, proceedings in accordance with law were necessary to terminate the service. In the result, the Supreme Court ruled that Akhilesh C. Bhargav had become a confirmed officer of the Gujarat I.P.S. Cadre and under Rule 12 (bb) of the Probation Rules, his services could not be brought to an end by the impugned order of discharge.

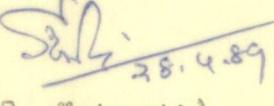
21. The decision of the Supreme Court in Akhilesh Bhargav's case is relevant in the present context to the extent that the Court had considered the relevance of the administrative instructions issued by the Ministry of Home Affairs in 1973 in regard to the extension of probation. In the instant case before us, similar administrative instructions issued by the Ministry of Home Affairs in 1959 would be applicable and extension of probation beyond double the normal period stipulated in the letter of appointment, cannot be justified from the legal point of view.

22. Following the ratio in the case of Akhilesh C. Bhargav decided by the Supreme Court, we hold that in the present case the applicant must also be deemed to have been confirmed in the post of Assistant Editor (Bhagirath-Hindi) in the Central Water Commission on 21.10.1988, when the impugned order of termination was made by the respondents. Consequently, the impugned order dated 21.10.1988, whereby the services of the applicant were terminated, is quashed. The respondents

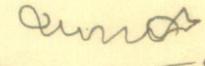
are directed to reinstate the applicant as Assistant Editor (Bhagirath-Hindi) within three months from the date of communication of this order. The applicant will be entitled to all consequential benefits, including the arrears of pay and allowances.

23. We, however, make it clear that after the applicant is reinstated in service, the respondents would be at liberty to take appropriate action under the relevant rules for unsatisfactory work or misconduct on the part of the applicant in accordance with law, if so advised.

24. There will be no order as to costs.


28.4.89

(S.P. Mukerji)
Vice-Chairman(Admn.)


28/4/89
(P.K. Kartha)
Vice-Chairman(Judl.)