

Central Administrative Tribunal,
Mumbai Bench, Camp at Nagpur.

O.A.211/00816/2016

Dated this ~~Wednesday~~ the 23rd day of September 2020.

Coram: Dr. Bhagwan Sahai, Member (Administrative)

Ravinder Kaur, Member (Judicial)

Shri Gejendra Baliramji Nandeshwar,
R/o. Qtr. No. 7/64/6, Ordinance Factory,
Ambazari Nagpur - 440 021.

Office address:

Storekeeper/Store (Stock),
Ordinance Factory, Ambazari, Nagpur.

Per no. 021508. IFAJ. .. Applicant.

(By Advocate Shri P.S. Sahare).

Versus

1. The Union of India, through
its Secretary,
Ministry of Defence, South Block,
Central Secretariat,
New Delhi - 110 011.
2. The Chief General Manager (Adm),
Ordinance Factory Ambazari,
Nagpur - 440 021.
3. Joint Work Manager (Admin),
Ordinance Factory Ambazari,
Nagpur - 440 021.
4. Joint Work Manager,
Joint General Manager (Stores),
Ordinance Factory Ambazari,
Nagpur - 440 021. .. Respondents.

(By Advocate Shri R.A. Gupte).

Order reserved on : 18.02.2020

Order delivered on : 23.09.2020.

O R D E R

Per : Dr.Bhagwan Sahai, Member (A).

In this OA filed on 6December 2016, Shri Gajendra B. Nandeshwar has sought quashing and setting aside of his reversion order dated 21.11.2016 (Annex A-1) and extension of his probation by order dated 17.11.2016 with consequential benefits (Annex-A2), along with payment of cost of this OA from the respondents.

A. Summarized relevant facts

1. The applicant has stated that he was appointed as a durwan in Ordnance Factory, Ambazari, Nagpur on 21.02.2005 and was promoted, on probation of two years, as store keeper, a group c post, from 08.05.2012 (Annex -A2). After two years of his promotion, he neither received confirmation of his promotion nor extension of his probation but by order dated 17.11.2016 his probation was extended from 08.05.2014 to 07.05.2015 (Annex-1).

2. On 13.09.2012 employees union complained about improper cooking of meals. As storekeeper though he was not concerned with the issue, he was transferred to main store of the factory. After that complaint, Respondent no.2 issued two warning

letters on 13.09.2012 and 22.09.2012, but he did not reply to them. Working relations with his head of stores section got strained, so he applied twice for transfer to establishment section but it was not agreed upon and his payment was stopped. Then he again requested to respondent no.2 i.e. Chief General Manager on 26.04.2014 for inter-section transfer (Annex-A5).

3. During that period his mother was not keeping well, so he used to take leave, for which he was issued a charge sheet and penalized with censure. His overtime payment was also stopped, which was restored later in view of his regular attendance.

4. He received a show cause notice on 01.07.2015 under Rule 3 (i,ii,&iii) for habitual absence and not performing duty of store keeper. He replied to it but by order dated 13.08.2015(Annex A_8), he was punished with reduction of pay by two stages. Another inquiry about missing materials from the store is still pending with the respondents.

5. On 03.10.2016 he received a show cause notice as to why his rank should not be reduced to durwan. It showed that during his probation period, his assessment was good in first half year and fifth quarter, and fair in middle of two years. He

replied to it on 12.10.2016(Annex-A10) that he had worked satisfactorily and taken leave due to poor health of his parents, and had suffered punishment of stoppage of overtime payment as well as reduction in pay by two stages. Hence the show cause notice be withdrawn.

6. Although he had completed his probation on 08.05.2014, by letter dated 17.11.2016 his probation was extended, which is arbitrary and biased. Then finding him unfit to continue on the post of storekeeper, by order dated 21.11.2016, he was reverted from that post to durwan. He claims that his performance was satisfactory and that is why he had been sent for advanced training at Dehradun during 2013, 2014 and 2016 (Annex-11); and was issued certificate of best employee during 2007 and 2010(Annex-12). Therefore, this OA has been filed.

B. Contentions of parties

In his OA and during arguments of his counsel on 18.02.2020 the applicant has contended that -

1) even after completing two years of probation, he was continued on the promoted post of storekeeper for about two years and a half without extending the probation. But it was later extended

by one year by order dated 17.11.2016 while the extended period of one year had already passed. This reveals that the order of his reversion, dated 21.11.2016 is without application of mind and a colourable exercise of power. Hence, it needs to be set aside;

2) during his probation period he was assessed as good in first half of the first year and fair/poor during second half of first year and third half of second year and fourth quarter of that year. Then again as good during 5th quarterly review. These details of his assessment for the probation period were communicated to him by notice dated 3/10.2016 (Annex - A9) but for extending his period of probation, assessment of his work was not communicated. Before passing the reversion order, the respondents ought to have assessed work of the applicant for the extended period of probation and thereafter should have taken appropriate action. Because of his punctual attendance on duty and satisfactory work, payment of overtime to him with effect from 23.06.2014 had also been restored. This shows that he was reverted without assessing his work and consulting his immediate superior. Therefore, the orders extending his probation and reversion need to be set aside;

3) as per the settled position in law,

decision for confirming an employee or extending his probation has to be taken after expiry of the initial probation period and any unsatisfactory progress should be communicated to him before expiry of the initial probation period. But no show cause notice was issued to him for improving his performance before extending his probation. Since he had been performing his duty well, he was sent for advanced training to Dehradun. The impugned orders are as after-thought. Thus the action of the respondents is violative of principles of natural justice. Hence they deserve to be set aside;

4) as per Supreme Court decisions in case of Devdutta vs Union of India (12.05.2008) and Abhijit Ghosh Dastidar vs Union of India and others (22.10.2008), entries in the ACR even if good or very good would be adverse for promotion if they were below bench mark prescribed for grant of promotion. Communication of all gradings, whether very good, good, average or poor should be communicated to the employees within reasonable period so that the concerned employees are able to represent for improvement of their grading and the representation should be decided fairly and in a reasonable period by an authority higher than the one which made the entries. Since the entries in the ACR of the applicant were not communicated to

him immediately after the probation period, on this ground also, reversion of the applicant and extension of his probation need to be set aside.

5) Stoppage of overtime payment and reduction in pay by two stages for two years and then reversion from the post of storekeeper to durwan, the applicant has been punished thrice for the same mistake. Because of this also the impugned orders deserve to be set aside.

6) As per Supreme Court decision dated 19.04.1996 in case of State of Punjab vs Baldev Singh Khosla, completion of maximum period of probation and continuation in service thereafter does not by itself mean deemed confirmation. However, before reverting an employee, performance during the period of extended probation also has to be considered. In case of the present applicant, it is claimed that before reverting him, his performance during the extended period was also not considered. Therefore, the OA should be allowed.

In their reply and during arguments of their counsel on 18.02.2020, the respondents have contended that -

1) because of his unsatisfactory performance as storekeeper on probation, he was issued advisory notes on 10.06.2013, 27.05.2014 and 06.06.2014;

2) since he frequently applied for leave and was not serious in performing his duties, his leave was rejected. Without sanction, he availed earned leave of 38 days, EOL of 32 days and half pay leave of 2 days during first year of his probation and 13 days EL, 64 days EOL, 7 days Commuted leave and 8 days HPL during second year without getting prior sanction;

3) the applicant has admitted that head of store section stopped all kinds of payment to him from 23.04.2014 to 24.06.2014, which establishes that his performance was poor;

4) earlier he had also been issued a show cause notice on 01.07.2015 under rule 16 of CCS (CCA rules 1965) mentioning that his performance in the second half year, third half year and fourth quarter of probation was fair/poor whereas the minimum required grade for completion of probation period is good. His performance during the years 12-13 and 13-14 was average (Annex R - 1, R - 2, R - 3 and R - 6). Thus he was not found fit to complete his probation and required to be reverted to the post of durwan. After considering his reply of 09.07.2015, he had been punished from 13.08.2015 with reduction of pay by two stages for two years with cumulative effect on future increments. The applicant has not challenged that order of

punishment imposed on him for misconduct, which means he clearly accepted dereliction of his duty;

5) the applicant had been initially posted in industrial canteen but because of unsatisfactory performance, he was transferred to store section with effect from 25.09.2012. He was also informed on 07.05.2012 that his performance as storekeeper, industrial canteen was not satisfactory and he was advised to improve it. Then he was issued a chargesheet on 25.01.2016 under rule 14 of CCS (CCA Rules 1965) for gross misconduct / misbehavior and negligence of duty (Annex R-5).

6) the applicant's performance during the year 2014 - 15 was also average with overall grading of 3.6 (Annex R-7). Therefore, on 03.10.2016, he was issued another show cause notice mentioning details of his performance during the period of probation, ie, the year 2012 - 13 and 2013 - 2014 and asking him as to why he should not be reverted to the post of durwan. To this he replied on 12.10.2016, and after considering it his period of probation was extended from 08.05.2014 to 07.05.2015 by order dated 17.11.2016;

In view of the above submissions, the contentions of the applicant have no merit and therefore, the OA should be dismissed.

C) Analysis and Conclusions-

We have carefully considered the case record and rival contentions of the parties. Based on it, we conclude as follows -

1) The applicant's probation period after getting promoted as storekeeper was 08.05.2012 to 07.05.2014. Subsequently, it was extended upto 07.05.2015.

2) Because of failure in performance of his duties and complaints against him, advisories were issued to him on 07.05.2012, 22.11.2012, 10.06.2013, 13.09.2012, 27.05.2014 and 10.06.2014. In between he was also punished with censure as per the order dated 05.05.2014. Payment of overtime was also denied to him for two months during April to June 2014.

3) As revealed from copies of the ACR and APR of the applicant for 2012-13, 2013-14 and 2014-15, enclosed by the respondents at Annex R - 6, and R - 7, his performance during the whole probation period was of average grade.

4) For various irregularities committed by him, after following the due procedure, he was punished with reduction of his pay by two stages as per order dated 13.08.2015.

5) The record of his performance from

08.05.2012 to 07.05.2014 was of only average grade, which also consisted of repeated warnings and advisories as well as transfer to another section. It is also pertinent to note that although the applicant's probation period of two years was from 08.05.2012 to 07.05.2014, since his probation had not been concluded and he was not confirmed on the post of storekeeper, he still continued to be on probation only. This is the view taken in the Supreme Court decision cited by the applicant himself—State of Punjab vs Baldev Singh Khosla.

By order dated 7.11.2016 his probation period was extended from 08.05.2014 to 07.05.2015. Before issuing the order for extension of his probation, the respondents have also considered his performance during the extended period of his probation, ie, 08.05.2014 to 07.05.2015 during which also his performance was of average grade (3.6). This action was also in conformity of the above caselaw.

6) Separately he was issued show cause notice dated 03.10.2016, as to why he should not be reverted from the post of storekeeper to that of durwan. After considering his reply to it dated 12.10.2016, the order of 21.11.2016 (Annex A - 1) was issued to him reverting him from the post of

storekeeper to durwan.

7) From the above submissions of the respondents and evidence brought on record in their support, we conclude that they have followed the procedure prescribed for the proceedings and principles of natural justice have been complied with.

8) The order of punishment dated 13.08.2015 and that of reversion dated 21.11.2016 were not for the applicant's same mistake as contended by him but they were based on distinct set of grounds. The earlier punishment order dated 13.08.2015 was because of his irregularities in carrying out assigned specific jobs/ tasks such as not handing over required materials, repeatedly calling staff for them, handing over incomplete materials to concerned staff, posting entries on computer without handing over the materials, etc. That is why the applicant has not challenged that punishment order dated 13.08.2015 for reduction of pay by two stages for two years with cumulative effect on future increments, which clearly establishes admission of his guilt.

Separately because of his consistent failure in satisfactorily performing of duties over the full probation period of two years, his probation came to extended, though there was delay

in issuing that order. And since he could not complete the probation satisfactorily even during the extended period, was punished at least twice (with censure and reduction in pay) before conclusion of the probation, and another inquiry is still pending against him, he rendered himself unfit for confirmation on the promoted post thereby making himself liable for reversion, hence he has been reverted to his earlier post of durwan. We do not find any infirmity in this action of the respondents.

9) In view of our above conclusions, we do not find any merit in this OA, it deserves dismissal, and the orders of the respondents for extension of the applicant's probation and his reversion from the post of storekeeper to that of durwan were justified.

D). Decision -

O.A. is dismissed, no costs.

(Ravinder Kaur)

Member (J)

(Dr. Bhagwan Sahai)

Member (A).

H.

