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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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Reg. No. OA 1180 of 1990

Date of decision: 20.7.1990

Kamlesh Kumar

Applicant

Vs.

1. Union of India through Secretary, Ministry of Agriculture, Govt. of India, New Delhi.
2. The Director General, I.C.A.R., New Delhi.
3. The Director, Central Institute for Research on Goats, Makhdoom, Post Farah (Mathura).

..... Respondents

PRESENT

Shri V.P. Sharma, counsel for the applicant.

Shri A.K. Sikri, counsel for the respondents.

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Hon'ble Shri B.C. Mathur, Vice-Chairman.

Hon'ble Shri J.P. Sharma, Member (J).

(Judgment of the Bench delivered by Hon'ble
Shri B.C. Mathur, Vice-Chairman.)

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985, by Shri Kamlesh Kumar working as Junior Stenographer in the office of the Western Regional Research Centre (CIRG), Avikanagar (Rajasthan) under the Indian Council of Agricultural Research against the impugned orders dated 22.5.90 (Annexure A-1 to the application).

2. The brief facts of the case, as stated by the applicant are that he was born in 1964 and had passed the B.Sc examination and also successfully completed one year diploma in stenography in 1984. In 1986, Respondent No. 3 notified a few vacancies for the post of Jr. Stenographers and the Employment Exchange, Mathura sponsored the applicant's case to Respondent No. 3 along with other candidates. The Employment Exchange had conducted a test for placing the name of the applicant in the list of qualified Stenographers. The applicant was called for written test meant for Junior Stenographers. The applicant along with other candidates

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who passed the written test on 3.11.86 were called for interview which ^{was} conducted on 10.11.86. They were further tested by way of written examination just before the oral interview. A duly constituted Selection Committee conducted the selection and the applicant was appointed as Junior Stenographer in the grade of Rs. 1200-2040 as per Annexure A-2 to the application. According to para 5 of the offer of appointment, the applicant was to be on probation for a period of two years which could be extended at the discretion of the competent authority. Failure to complete the period of trial to the satisfaction of the competent authority would render him liable to discharge from service. The applicant joined service on 25.11.86 and his period of probation was over on 24.11.88. There was no adverse communication against him during this period nor was the probation extended. After waiting for confirmation, the applicant made a representation on 18.7.89 for ordering his probation clearance. He was informed that his case had not been examined in the D.P.C. due to non-receipt of vigilance clearance. Respondent No. 3 published a seniority list on 12.9.89 where the applicant's name is at Sl. No.2.

3. The case of the applicant is that the conditions of do ^{appointment} not authorise the respondents to compel the applicant to reappear in the test as the applicant had already qualified for the post at the time of initial selection and, therefore, the impugned order dated 22.5.90 is illegal and against the conditions of appointment and should be quashed.

4. The respondents in their counter reply have stated that the applicant has not come to the Tribunal with clean hands and has deliberately suppressed several facts to suit his case. It has been stated that the original offer of appointment contained a very material clause before clause-10 at page 2 of the appointment letter which, inter-alia, states that the candidate can be called upon to undergo ~~such~~ test as may be deemed necessary by the Director during the period of his probation, but the copy of the appointment letter filed by the applicant is devoid of that clause.

Further, at the beginning of clause-10, the initial of the then Administrative Officer - Shri Nand Kishore - is also evident which shows that there has been some correction/alteration at a subsequent date. It has been stated by the respondents that the candidates sponsored by the Employment Exchange for the post of Junior Stenographers had to undergo tests as prescribed. The applicant was called for the test and appeared in the stenography and typing tests conducted on 3.11.86. Dictation was given at the speed of 80 w.p.m. in English, but the applicant had committed more than 5% mistakes. However, since out of those candidates available for selection, the applicant's speed in English shorthand was the highest, he was considered for selection but no written examination was conducted at the time of interview. In the offer of appointment there was a definite condition that during the period of probation, he would have to pass such tests as may be prescribed by the Director, CIRG, failing which his services could be terminated without assigning any reason thereof. The applicant himself admits that he was on probation which was extendable unless confirmed. He had to complete the period of trial to the satisfaction of the competent authority and he cannot plead against holding of such test which would determine his competence or satisfactory completion of the probation. At the time of test conducted in English shorthand, the applicant had committed more than 5% mistakes and as such it was necessary that he should undergo such a test before confirmation. It has been stated by the respondents that unless rules otherwise specifically provide, there cannot be any automatic confirmation in service. The applicant's conduct in cutting out a clause in the offer of appointment is under investigation. The applicant had made an allegation of discrimination and violation of Articles 14 and 16 of the Constitution as one Shri S.R. Achary, Sr. Stenographer, was confirmed on completion of his two years probation without having to reappear in the test. It has been stated that this ground is totally wrong as Shri Achary was not in the

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same footing as the applicant. Shri Achary was in the senior scale of Rs. 1640-2900. Others who were appointed alongwith the applicant and who had been given similar letters of appointment have been asked to take the test and they were willing to take the test, but the applicant has challenged the competence of the respondents asking the applicant to undergo a stenography test once again. According to the respondents, this became necessary as the applicant and others had failed to pass the requisite test at the time of selection, but they were appointed subject to their successful completion of probation which would include passing the necessary test.

5. The learned counsel for the applicant emphasised that once a person is appointed to a service, the conditions of service rules will apply and the appointment letter itself becomes meaningless. He cited two cases AIR 1967 SC 1889 - Roshan Lal Tandon Vs. Union of India and Others - and A.T.R. 1988 (1) 556 - Dr. Sangeeta Narang Vs. Delhi Administration - wherein it has been clearly stated that the terms of contract are not relevant and where the probation period is not extended and no adverse remarks communicated, it would be deemed that the probation has been successfully completed. He also cited the case of the State of Punjab Vs. Dharam Singh - AIR 1968 S.C. 1210 - which has also been relied upon in the case of R.K. Bharati Vs. Union of India decided by the Principal Bench in O.A. 2045/88 on 28.4. 89. The learned counsel for the applicant, Shri V.P. Sharma, urged that under service ^{juris}prudence, a Government servant cannot be asked to reappear for any test. He said that Supplementary Rule 2 (15) deals with probation and it has been clearly brought out by the Supreme Court in the case of R.L. Gupta Vs. Union of India & Others - 1988 (2) SLJ 164 - quoted in R.K. Bharati's case (supra) that such probation cannot be continued indefinitely.

6. The learned counsel for the respondents, Shri A.K. Sikri, pointed out that three persons were appointed, including the applicant, and the same conditions were offered to them but the others are willing to take the test. The respondents are not removing the applicant from service, but only asking him to take the test

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to judge his suitability for completing the probation. Earlier, none of the three passed the prescribed test for the post, but as the respondents needed the services of some people, a specific condition was put in the appointment letters in all the three cases, but the applicant has torn the top portion of the appointment letter. He produced the office copy of the original letter in the file sent to the applicant and showed that the top portion at page 2 of the appointment letter indicating "During the period of probation he will have to pass such tests as may be prescribed by the Director CIRG. Failing which his services can be terminated without assigning any reasons" has been cut out by the applicant. He also said that the employees of the I.C.A.R. are not covered under Article 311 of the Constitution. It was the right of the respondents to test the suitability of the persons under probation. He said that as far as Shri Achary was concerned, he was not sponsored by the Employment Exchange. He was a departmental candidate who was appointed to a higher scale, but there was no discrimination against the applicant who was appointed alongwith the two others and all the three have been asked to take the test.

7. Shri Sikri also cited the case of another officer of the ICAR - Capt. Mehar Singh Vs. ICAR decided by the Chandigarh Bench of this Tribunal on 12.4.1990 in OA 371/HR/89 - where various cases on the subject of probation have been cited and the Tribunal relied on the judgment of the Supreme Court in the case of State of Maharashtra Vs. Veerappa R. Saboji and others - SLJ 1979 SC 621 - where it was held that there was no provision for deemed confirmation under Bombay Judicial Services Rules, where a two year period of probation has been provided.

8. We have gone through the pleadings and given careful consideration to the arguments advanced by the learned counsel. The issues involved are whether on completion of two years probation period, the applicant would be deemed to have been confirmed, whether the conditions laid down in the appointment letter are irrelevant after the appointment and normal service conditions will be applicable and whether any relief can be given to the applicant if it is held that he did not approach the tribunal with clean hands.

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We must examine each case on its own merits. In the case of R.K. Bharti cited by the applicant there is deemed confirmation, but it must be noted that in that case the applicant had completed more than 10 years service and vindictive attitude on the part of the respondents had been alleged and the services of the applicant had been terminated. In the case of R.L. Gupta cited by the applicant, the Supreme Court had held that "to place Judicial Officer, promoted to the Higher Judicial Service on probation nearly nine years after his promotion as in this case, is a mere farce". In State of Gujarat Vs. Akhilesh C. Bhargav and Others 1988 (2) SLJ 86, the Supreme Court dealing with the discharge of a probationer belonging to the Indian Police Service, it was contended that no order or extension was necessary to be made as the process of confirmation was not automatic and that an order of confirmation had to be made. In the case of State of Punjab Vs. Dharam Singh - AIR 1968 SC 120 - it was noted that under the relevant rules there was a maximum limit of three years beyond which the period of probation could not be extended ^{and} a probationer working beyond that period would deemed to be confirmed. This judgement and many other judgements of the Supreme Court have also been discussed at length in the case of P.K. Jain Vs. Union of India and others decided on 5.1.1990 by the Principal Bench of this Tribunal in OA 801/87 in which one of us (Shri B.C. Mathur) was a Member and reliance was placed on the ruling of the Supreme Court in Partap Singh Vs. Union Territory of Chandigarh (AIR 1980 SC 57) where the officer had crossed the period of three years probation, that there is no specific rule which provides that in the absence of the order of confirmation at the end of the probation, the employee must be presumed to be confirmed and it must be presumed that his probation was extended. A reference was also made to the case of Dhanjibhai Vs. State of Gujarat (AIR 1985 SC 603) where it was observed that there is no right of the probationer to be confirmed because he had completed the period of probation of two years, and had passed the requisite tests. It was also observed that the power is exercised fairly and reasonably having

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regard to the context in which power has been granted.

9. Viewed from the above rulings and observations of the Supreme Court, it is clear that where services have been terminated after keeping an officer under probation for unduly long periods of ten years or so, such termination would normally be suspect in the eyes of law, but in the present case the applicant was appointed on probation of two years only in November 1986 and the general instructions of Government are that normally none should be kept on probation for more than double the period prescribed for probation, the case of the applicant is on a different footing. We must also take note of the circumstances under which the applicant was appointed. It has been clearly brought out that as the applicant and two others had not passed the typing test as they had committed more than 5% mistakes, a clause was inserted in their appointment letter that they would have to take such tests as may be prescribed by the Director CIRG. We feel that this is a perfectly legitimate stipulation. After comparing the office copy of the appointment order with the copy of the order produced by the applicant, we are fully satisfied that the applicant has tampered with the appointment order and he has not come to this Tribunal with clean hands. This is an application akin to a writ petition before the High Court under Article 226 of the Constitution and no discretion can be allowed in favour of a person who does not approach the Tribunal with clean hands.

10. As the conditions of probation in the appointment order are clear, the applicant cannot refuse to take such tests as may be prescribed by the competent authority, specially when such tests are also prescribed for the two other persons appointed along with the applicant. We accept the contention of the Respondents that the applicant was appointed in November, 1986, even though he had not passed the prescribed test, as they needed some stenographers at that time and it was understood that the applicant

would pass such tests in due course. We find no rule which prohibits the respondents to put the applicant to suitable tests before confirming him. Having regard to the circumstances of this case, we see no merit in the application and the same is dismissed.

Parties to bear their own costs.

J.P. Sharma

(J.P. Sharma)
Member (J)

B.C. Mathur
20.7.90
(B.C. Mathur)
Vice-Chairman

Pronounced in open court by me.

B.C. Mathur
20.7.90