

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2100/90

New Delhi this 9th day of February, 1995

Hon'ble Mr. Justice S.C.Mathur, Chairman
Hon'ble Mr. P.T.Thiruvengadam, Member

Shri Naresh Chand
Asstt. General Managing (Officiating)
(Equipment Planning)
West Wing, 7th Floor
Chander Lok Building
Eastern Court
Janpath
NEW DELHI.

.... Applicant

(By Shri B.K.Agarwal, Advocate)

Vs.

Union of India through

1. The Member (Services)
Telecom Commission
Sanchar Bhawan
New Delhi.

2. Chief General Manager
Mahanagar Telephone Nigam Ltd.,
Kidwai Bhawan
New Delhi.

.... Respondents

(By Shri A.K.Sikri and Shri V.K.Rao, Advocates)

O R D E R (Oral)

Hon'ble Mr. Justice S.C.Mathur, Chairman

The applicant, Shri Naresh Chand approached this Tribunal seeking two reliefs:

i) His confirmation on the post of Assistant Divisional Engineer(Telegraphs) w.e.f. 20.7.1988, and

ii) Promotion to the next higher post.

\

.....2/-

2. The learned counsel for the applicant has stated that during the pendency of the application, the applicant has been granted promotion by order dated 20.1.1993 and therefore, the relief in respect of promotion has become infructuous.

3. In view of the above statement, the surviving grievance of the applicant is that he deserves to be confirmed w.e.f. 20.7.1988 while he has been confirmed w.e.f. 20.5.1989.

4. The facts appearing from the pleadings of the parties or the records produced before us are thus: The applicant was appointed Assistant Divisional Engineer on 21.7.1986 on probation of two years. Before the expiry of the probationary period, he was placed under suspension on 10.3.1988. This suspension continued upto 27.9.1988 when it was revoked. In view of the fact that his suspension was continuing, the applicant was not confirmed on 21.7.1988 when the period of two years expired. The applicant was not communicated any order extending the period of probation. The suspension was made in view of the fact that the Central Bureau of Investigation(CBI) was making investigation of a criminal case in which the applicant was also allegedly involved. When the CBI could not complete the investigation within six months from the date of suspension, the department revoked the suspension. The CBI enquiry however, continued. The question of confirmation or extension thereof was considered. Initially the recommendation was that his confirmation may be extended by six months. Ultimately, it was extended by

.....3/-

10 months. After the filing of the present OA the CBI has filed chargesheet in Court where the prosecution is pending. Applicant is also one of the accused.

5. The submission of the learned counsel for the applicant is that the probationary period could not be arbitrarily extended. It is further submitted that the order of extension of probation was required to be served upon him which was never done. In support of the proposition that the applicant should have been confirmed immediately on the expiry of the period of two years and he should have been communicated adverse material and order extending the period of probation, the learned counsel has relied upon observations contained at page 187 of Swamy's Complete Manual on Establishment & Administration, 3rd Edition(1991). The observation is based on Office Memorandum dated 15.4.1959 issued by the Ministry of Home Affairs. Under the heading "General Principles of Probation on Appointment" in Chapter-18 clause - ix, it is stated "The decision whether an employee should be confirmed or his probation extended should be taken soon after the expiry of the initial probationary period, that is ordinarily within six to eight weeks, and communicated to the employee together with the reasons in case of extension. A probationer who is not making satisfactory progress or who shows himself to be inadequate for the service in any way should be informed of his shortcomings well before the expiry of the original probationary period so that he can make special efforts at self-improvement."

.....4/-

6. We may assume that the respondents were not entitled to extend the probationary period arbitrarily but the material produced before us shows that the action of the respondents is not arbitrary. It is not disputed that before the expiry of the probation period, the applicant had been suspended and the suspension order had been communicated to him. The notes and orders in the file produced by the respondents' counsel shows that C.B.I. enquiry was pending in respect of certain irregularities or illegalities allegedly committed by the applicant and certain other officials of the Department. It is in that connection that the order of suspension was passed. It was revoked as the enquiry could not be concluded within reasonable time. The suspension was not revoked on the ground that the applicant had been exonerated at the enquiry. On the contrary it continued and has now resulted in applicants' prosecution, as stated at the Bar by the learned counsel for the respondents. On these facts, in our opinion, the extension of probation period cannot be said to be arbitrary.

7. So far as the Office Memorandum extracted above is concerned we are of the opinion that it is of recommendatory nature. Non-compliance of any recommendation does not result in invalidation of the resultant action. Further, in our opinion the statement relied upon relates to discharge of official duties. That statement does not refer to crime, if any, committed by an employee. The expectations of self improvement can relate to performance of official duties only. By improvement in

(S)

such performance in the future the offence is not wiped off. Accordingly, in our opinion, the order extending the probation period, does not suffer from any illegality.

8. There is another aspect of the matter. Except where the Rules provide the maximum period of probation, an employee does not get confirmed automatically. There will have to be a specific order of confirmation. Such order, in the present case, came into existence only on 20.7.1988. If the plea of the applicant is accepted, he will get confirmation even without a specific order.

9. Apart from the above, we are of the opinion that the question as to the date from which the applicant should be deemed to be confirmed is only of academic interest. The applicant has already been promoted. It is not the case of the applicant that his promotion should be antedated. If the date of promotion is not altered, the date of confirmation becomes irrelevant.

10. In view of the above, the application lacks merit and is hereby dismissed. There shall be no order as to costs. Interim order, if any, operating, shall stand discharged.

P. J. D.

S. C. MATHUR

(P.T. THIRUVENGADAM)

(S.C. MATHUR)

MEMBER (A)

CHAIRMAN

/RAO/