

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

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O.A. No. 700/92
T.A. No.

199

DATE OF DECISION 4.11.1997

Sh.S,J.Ravi Verma

Petitioner

Snri S.M.GARG

Advocate for the Petitioner(s)

VcISUS

UOI & ORs

Respondent

Mrs.P.K.Gupta, learned counsel

Advocate for the Respondent(s)

through proxy counsel Sh.Harvir Singh

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member(J)

The Hon'ble ShriS.P.Biswas, Member(A)

1. To be referred to the Reporter or not? *yes*

2. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 700/92

New Delhi this the 4th day of November, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri S.P. Biswas, Member(A).

Shri S.J. Ravi Varma,
R/o No. 46, Bharat Nagar,
Delhi-110 052.

... Applicant.

By Advocate Shri S.M. Garg.

Versus

1. Union of India, through
the Development Commissioner,
for Handlooms,
Ministry of Textiles,
Udyog Bhawan,
New Delhi.

2. The Director (North Zone),
Weavers' Service Centre,
Bharat Nagar,
Delhi-110 052.

... Respondents.

By Advocate Shri Harvir Singh, proxy for Smt. P.K. Gupta,
Counsel.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the order passed by Respondent 2 dated 14.2.1992 in which it has been stated that the applicant who was working as Art Designer on probation was discharged from service with immediate effect.

2. The brief facts of the case are that the applicant was appointed as Art Designer w.e.f. 25.1.1975 in a temporary capacity with probation of 2 years. According to the respondents, he was appointed by order dated 5.2.1975 and posted at Weavers Service Centre,

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Bangalore. He was transferred from Bangalore to Madras by order dated 26.3.1976. The applicant's period of probation was extended initially upto 31.3.1977, then upto 31.12.1979 further extended upto 30.6.1980 and lastly by memo dated 24.4.1981 his probation was extended upto 30.9.1981. He submits that no further memo extending the period of probation was issued to him. The respondents have admitted that they have been issuing various orders extending the period of probation of the applicant from time to time. The applicant has contended that in the absence of any further letter extending period of probation beyond 30.9.1981 he is deemed to be confirmed in the post of Art Designer. He relies on the Ministry of Home Affairs dated 15.4.1959 in which the maximum period of probation is prescribed as 4 years and since more than 4 years have already expired after his appointment, one of the reliefs he has claimed is that he should be deemed to be confirmed in the post of Art Designer w.e.f. 1.10.1981. The applicant has also sought quashing of the impugned order dated 14.2.1992 and reinstatement in service with all consequential benefits. Shri S.M. Garg, learned counsel for the applicant, relies on the judgement of the Supreme Court in **State of Punjab Vs. Dharam Singh** (1968(3) SCR P-1) and **The Chief General Manager, State Bank of India and Anr. Vs. Bijoy Kumar Mishra** (JT 1997(8)SC 221).

3. The respondents have filed a brief reply in which they have taken an untenable stand that the provisions of O.M. dated 15.4.1959 are not applicable to the applicants as this O.M. has been amended by O.M. dated 19.5.1983 and 5.12.1984. This itself shows that the

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respondents have not filed their reply carefully. They have contended that provisions of the CCS(CCA) Rules, 1965 are not attracted in this case as the applicant has not been removed from service on account of misconduct. However, they have submitted that the applicant had been duly apprised of his shortcomings in his work, deficiencies and misconduct even after 1981 by various memos. They have, however, admitted that the applicant has been in service for 17 years and continued on probation till he was discharged from service by the impugned order dated 14.2.1992.

4. From the above facts, it is seen that the respondents have last extended the probation period of the applicant upto 30.9.1981 which means that the applicant was on probation for more than six years. Paras 2 and 3 of the O.M. dated 15.4.1959 provide as under:

"2. On the expiry of the period of probation, steps should be taken to obtain the assessment reports on the probation and to:-

(i) Confirm the probationer/issue orders regarding satisfactory termination of probation, as the case may be, if the probation has been completed to the satisfaction of the competent authority; or

(ii) Extend the period of probation (in terms of para.1(viii) of the O.M. dated the 15th April, 1959) or discharge the probationer or terminate the services of the probationer as the case may be, in accordance with the relevant rules and orders, if the probationer has not completed the period of probation satisfactorily.

3. The date from which confirmation should be given effect to is the date following the date of satisfactory completion of the prescribed period of probation or the extended period of probation, as the case may be. The decision to confirm the probationer or to extend the period of probation, as the case may be should be communicated to the probationer normally within 6 to 8 weeks.

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Confirmation of the probationer after completion of the period of probation is not automatic but is to be followed by formal orders. As long as no specific orders of confirmation or satisfactory completion of probation are issued to a probationer, such probationer shall be deemed to have continued on probation".

5. During the hearing, the learned counsel for the applicant has contended that in any case applicant's probation could not have been extended beyond the maximum period of three years which was not disputed by the learned proxy counsel for the respondents. He has further contended that in any case even if the last date of extension of probation is taken as 30.9.1981, since ^{there are} no further extensions which are in any case against the rules and instructions on the subject, the applicant is deemed to have been confirmed w.e.f. 1.10 1981.

6. In a recent judgement in The Chief General Manager, State Bank of India & Anr. Vs. Shri Bijoy Kumar Mishra, the Supreme Court had quoted the judgement of the Constitution Bench in Dharam Singh's case (supra) which reads as follows:

"The Court has consistently held that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only, in the absence of any indication to the contrary in the original

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order of appointment or promotion or the service rules. In such a case, an express order of confirmation is necessary to give the employee a substantive right to the post, and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation it is not possible to hold that he should be deemed to have been confirmed....In all these cases, the conditions of service of the employee permitted extension of the probationary period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period.

" In the present case, R.6(3) forbids extension of the period of probation beyond three years. Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negated by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the

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employee allowed to continue in the post on
completion of the maximum period of probation
has been confirmed in the post by
implication". (emphasis added)¹⁸

7. In the present case according to the respondents the applicant is on probation for as much as 17 years for which they have not produced any rule or instruction. From the materials on record, it appears that the probation of the applicant had been extended initially by several years upto 30.9.1981 on the grounds that his work and performance had not been found satisfactory. In the memo dated 21.1.1977, the respondents have specifically mentioned that ~~since~~ his work and conduct during the period have not been found to be satisfactory. It is further stated that even during the period of observation he had not shown any improvement in his work and conduct and, therefore, his services were liable to be terminated. He has also been issued memos during this period that he lacks initiative, has not learnt his work, his power of expression is found to be not very good and his standard of work also requires betterment, as seen from the memo dated 20.9.1975. However, it is a fact that in spite of these shortcomings which the respondents have noted and informed the applicant during the period from 1975 onwards for extending his probation till 30.9.1981, they continued the applicant in service till his services were discharged with immediate effect by order dated 14.2.1992. The fact that the respondents have not issued any further order extending his probation has, therefore, to be taken to mean that the applicant's conduct and work had improved as the

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respondents had themselves continued him in service for another 11 years. The respondents in their reply have submitted that they have been informing the applicant of his shortcomings, deficiencies even after 1981 by various memos issued between 28.2.1981 and 23.8.1991. These memos refer to various adverse remarks in the applicant's confidential reports, imputations in his attendance and not attending to his duties, his work and conduct being not satisfactory and so on.

8. In the facts and circumstances of the case, therefore, even though the impugned order dated 14.2.1992 discharging the applicant who is stated to be working on probation, does not ex facie contain any stigma or purport to be penal, from the materials placed on record it appears that the respondents have issued the impugned order by way of punishment for his work and conduct in which case the provisions of Article 311(2) of the Constitution read with the provisions of the CCS(CCA) Rules, 1965 are attracted. In other words, the form of the impugned order cannot in the facts and circumstances of the case, be allowed to camouflage the respondents action or pleading that the discharge order of the probationer as the applicant has been referred to in the order does not have to be preceded by a disciplinary inquiry. The Supreme Court in another case **Life Insurance Corporation of India & Anr. Vs. Shri Raghavendra Seshagiri Rao Kulkarni** (JT 1997(8) SC 373), has held as under:

"...But it cannot be laid down as a general rule that in no case can an enquiry be held. If the termination is punitive in nature and is brought about on the ground of misconduct,

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Article 311(2) would be attracted and in that situation it would be incumbent upon the employer, in the case of government service, to hold a regular departmental enquiry."

(see also the judgement of the Supreme Court in **Employees State Insurance Corporation Vs. Dwarka Nath Bhargwa** (JT 1997(7) SC 528).

9. Therefore, in the facts and circumstances of the case, we have no doubt that the respondents have acted in violation of the rules/instructions on probation and their contention that the applicant was on probation for over 17 years cannot be accepted. Following the judgements of the Supreme Court, referred to above, since the respondents have themselves allowed the applicant to continue in the post of Art Designer after completion of the maximum period of probation, even though without an express order of confirmation, he cannot be deemed to be a probationer by implication. In this case, therefore, it is permissible to draw the inference that the applicant has been allowed to continue in the post after completion of the maximum period of probation and has been confirmed by implication.

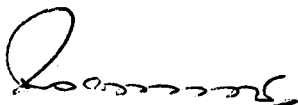
10. In view of the above, the impugned order of discharge from service dated 14.2.1992 is quashed and set aside as violative of the provisions of Article 311(2) of the Constitution as no enquiry has been held as prescribed by law and the rules. As prayed for by the applicant, he shall be deemed to be continued in the post of Art Designer w.e.f. 1.10.1981. The respondents are directed to reinstate the applicant in service immediately with consequential benefits in accordance with law/rules.

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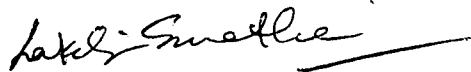
However, it will be open to the respondents to hold a departmental enquiry and terminate his services or otherwise punish him if charges are proved against him in accordance with law.

11. For the reasons given above, O.A. is allowed.
No order as to costs.



(S.P. Biswas)
Member (A)

'SRD'



(Smt. Lakshmi Swaminathan)
Member (J)