

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI**

(9)

O.A. No. 1411/93
T.A. No.

199

DATE OF DECISION 15.09.1994.

<u>Sh. P. G. K. Pillai</u>	Petitioner
<u>Sh. U. S. Bisht</u>	Advocate for the Petitioner(s)
Versus	
<u>U. O. I. & Ors.</u>	Respondent
<u>Sh. K. C. Mittal</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice S. K. Dhaon, Acting Chairman

The Hon'ble Mr. B. N. Dhoundiyal, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

B.N.
(B. N. DHOUNDIYAL)
MEMBER (A)

S.K.
(S. K. DHAON)
ACTING CHAIRMAN

To be marked
A.F. 11

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(10)

OA-1411/93

New Delhi this the 15th Day of September, 1994.

Hon'ble Mr. Justice S.K. Dhaon, Acting Chairman
Hon'ble Mr. B.N. Dhoundiyal, Member(A)

Shri P.G.K. Pillai,
A-108, Moti Bagh-I,
New Delhi-21.

Applicant

(through Sh. U.S. Bisht, counsel)

versus

1. Union of India,
through Secretary,
Ministry of Agriculture,
(Deptt. of Agriculture & Co-operation),
Krishi Bhavan,
New Delhi.

2. Jt. Secretary(AC&IC),
(Deptt. of Agriculture & Co-operation),
Ministry of Agriculture,
Krishi Bhavan,
New Delhi.

Respondents

(through Sh. K.C. Mittal - none present)

ORDER(ORAL)

delivered by Hon'ble Mr. Justice S.K. Dhaon, Acting Chairman

The order dated 2.7.93 extending the period of probation of the applicant from 28.02.1993 to 27.03.1994 is being impugned in the present application.

On 7.3.1989 the applicant was appointed as an Accountant (General Central Service, Group "B") on an officiating promotion basis until further orders. The order recited that the applicant will be on probation for a period of two years from the date of his appointment which period may be extended at the discretion of the appointing authority if considered necessary. On 27.7.92 the period of probation of the applicant was extended upto 27.2.93.

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It is apparent from the terms of the letter of appointment that the maximum or the optimum period of probation of the applicant had not been fixed. No statutory rule has been brought to our notice by the learned counsel wherein the maximum period of probation has been prescribed. Reliance is, however, placed upon Swamy's Compilation Manual wherein Chapter 15 at page 138, a decision of the Government of India is noted to the following effect:-

" 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 happened 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."

A close reading of the afore-quoted passage will indicate that even double the period of probation as indicated is not sacrosanct. It is provided therein that, for exceptional reasons, the period of probation may be extended even beyond the double period of ~~of~~ ⁱⁿ probation. To put in on a practical level, according to the afore-quoted passage, the period of probation of the applicant could be extended even beyond the period of four years for an exceptional reason. We may note at this stage that it is not the requirement of the Government order that the exceptional reasons should be recorded in the order whereby the period of probation is being extended. It is, therefore, implicit in the Government of India's order that the reasons which should be exceptional must exist.

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In the counter-affidavit filed on behalf of the respondents, it is averred that the applicant is facing departmental proceedings of grave charges of misconduct. The document annexed to the counter-affidavit indicates that the misconduct attributed to the applicant relates to the year 1990. One of the charges of misconduct levelled against the applicant is of bigamy. We are, therefore, satisfied that the applicant's case was an exceptional one within the meaning of the afore-quoted order of the Government of India and, therefore, the respondents did not commit any illegality in putting him on probation beyond a period of four years beginning from 7.3.1989.

Reliance is placed upon the decision of this Tribunal in the case of R.K. Bharti Vs. U.O.I. & Anr. (ATR 1989(2) CAT P.456). In that case, this Tribunal, while relying upon the afore-quoted order of the Government of India, observed that since the normal period of four years or double the period of probation had expired, the Government servant before the Tribunal in that case could not be kept on probation. We have already indicated that in this case an exceptional situation exists. This case is, therefore, not apposite.

Reliance is placed by the learned counsel for the applicant to paragraph-1(ix) of the Government of India decision as quoted in Swamy's Compilation. According to this passage, a decision whether an employee should be confirmed or his probation extended should be

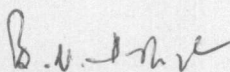
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taken soon after the expiry of the initial probationary period, that is ordinarily within six to eight weeks and communicated to the employee together with the reasons in case of extension. It is urged that no communication having been sent to the applicant together with the reasons, the respondents acted arbitrarily in the case of the applicant.


Paragraph 1(ix) will not apply in the case of the applicant. Its contents are of a general application whereas the aforequoted rule is of special application. It is a settled law that a special provision excludes the general provision. Assuming paragraph 1(ix) applies, it cannot be said that, in the case of the applicant, the extension of probation twice within a reasonable period suffered from any irregularity or infirmity.

There is no substance in this application.
It is dismissed accordingly.

No costs.


(B.N. Dhoundiyal)

Member(A)


(S.K. Dhaon)

Acting Chairman