

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O A No. 935/93

New Delhi: this the 26th day of July, 1999.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE MR. P. C. KANNAN, MEMBER (J)

Shri Hari Kishan,

S/o Shri Bhoop Singh,

R/o Gr.No. 52/III,

Central Govt. Colony,

NH IV, Faridabad-121 001

... Applicant.

(By Advocate: Shri V.K.Mehta)

Versus

1. Union of India
through
Secretary,
Ministry of planning,
Department of Statistics,
National Sample Survey Organisation,
(Field Operations Division),
Sardar Patel Bhawan,
Parliament Street,
New Delhi - 110001.
2. Director,
National Sample Survey Organisation,
(Field Operations Division),
Block No.8, Wing No.6,
R.K.Puram,
New Delhi.
3. Director of Canteens,
Department of Personnel & Training,
Ministry of Personnel, P.G. & Pensions,
Room No.707,
Nirvachan Sadan,
Ashoka Road,
New Delhi -110001.
4. Shri K. R. Satyamurthi,
presently Deputy Commissioner of
Statistics,
Central Ground Water Board,
Ministry of Water Resources,
Central Govt. Office Buildings,
NH-IV, Faridabad (Haryana).

.... Respondents.

(By Advocate: Shri P. H. Ramchandani).

ORDER

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

Applicant impugns respondents' order dated 17.3.92 (Annexure-A1).

2. Admittedly applicant was appointed as a Bearer vide order dated 18.3.91 (Annexure-A2). The order stated that applicant would be on probation for 6 months, during which period his services would be terminated at any time without notice/compensation. The probationary period was also liable to extension.

3. Rule 8(2) Departmental Canteen Employees (Recruitment & Condition of Service) Rules, 1980 extracted in the body of the OA provides that the 6 month period of probation can be extended for a further period of 6 months in case the appointee's work and conduct is not found satisfactory.

4. Respondents in their reply have stated in their reply that applicant's work was not found satisfactory as he was found to be avoiding work on one pretext or the other, and the applicant's father who was working as Accountant in the establishment was also putting pressure that his son should not be made to do labourious work. It is further stated that the Canteen Committee Members advised applicant to improve his performance which he failed to do, upon which the Departmental Canteen Committee in its meeting held on 28.10.91 decided to extend applicant's probation for a further period of 6 months, i.e. till 17.3.92, but when

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even after extension of his probation, no improvement in performance was discernable, and applicant's father was continuing to put pressure on behalf of his son applicant's services were terminated by order dated 17.3.92.

5. At the outset we must record our astonishment at the reason that applicant's father was pressuring respondents on behalf of his son, as a ground put forward by respondents to remove applicant. If the father was putting pressure, it is he who should have been dealt with in accordance with rules.

6. Furthermore when we asked respondents' counsel Shri Ramchandani whether any warning memos were issued to applicant, he was not able to show us any. He was also not able to show us any record or document, recording a finding that applicant's work indeed was unsatisfactory which necessitated extension of his probation by 6 months in terms of Rule 8(2) supra.

7. In this connection, para (ix) of MHA's OM dated 15.4.59 containing the general principles on Probation reproduced at page 194 of Swamy's Establishment and Administration 5th Edition, 1994 which is very relevant is reproduced below:

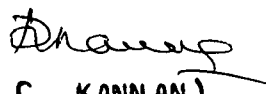
"The decision whether an employee should be confirmed or his probation extended should be taken soon after the expiry of the initial probationary period, that is ordinarily within six to eight weeks, and communicated to the employee together with the reasons in case of extension. A probationer who is 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."

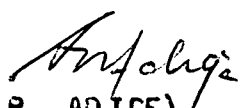
8. Nothing has been shown to us to establish that prior to the extension of applicant's probation or termination of his services by impugned order dated 17.3.92, applicant was informed of the shortcomings, and that he was not making satisfactory progress, and/or he was inadequate ^{for the} job to which he was appointed, to enable him to improve himself.

9. Furthermore, nothing has been shown to us to establish that the aforesaid para extracted above has been superseded, recalled or modified.

10. Under the circumstances we are compelled to hold that the respondents in issuing the impugned order dated 17.3.92 have not acted in accordance with their own rules and instructions.

11. This O.A. succeeds and is allowed. The impugned order dated 17.3.92 is quashed and set aside. Applicant should be reinstated within one month from the date of receipt of a copy of this order. Upon reinstatement applicant shall be treated as a bearer on probation, and upon his work being found satisfactory, he shall be confirmed by respondents in accordance with rules. He shall not be entitled to any back wages for the intervening period between the date of his removal from service and his reinstatement, but the aforesaid period shall count towards his seniority, increments and retiral benefits. No costs.


(P.C. KANNAN)
Member (J)


(S.R. ADIGE)
Vice Chairman (A)

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