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interfere with his functioning on the post of Storekeeper in 508 Army base Workshop, Allahabad Fort, Allahabad.

2. It appears from the facts averred in the O.A. that the applicant was selected for the post of Store-Keeper and was appointed w.e.f. 11.6.1990 on that post on two years' probation. in 508 Army Base Workshop Allahabad Fort, Allahabad. The period of probation was extended by one year from 11.6-1992 to 10.6.1993. Thereafter also the applicant has been working on the same post and he claims that neither during nor after period of expiry of extended period of probation, he was given any adverse report. The impugned order dated 17.2.1997 by which he was served with the notice of termination of service came to him as a surprise. Applicant's case is that having worked on probation for the maximum ~~permitted period~~ permissible period of 3 years inclusive of extended period of probation and no adverse report having been communicated to him nor any explanation having been called for during or after the extended period of probation, the applicant ceased to be on probation w.e.f. 11.6.1993 and he shall be deemed to have been substantively appointed on the post of Store-Keeper. The applicant contends that in view of this, his services could not ^{be} terminated under the provision of Rule 5(1) of CCS (TS) rules 1965. He further contended that his services could have been terminated in terms of ^{the} letter of appointment issued during or after 2 years' probation or on expiry of extended period of probation, but since he has been allowed to continue uninterruptedly for about 4 years thereafter without adverse remarks etc, his services could not have been

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terminated even in terms of the conditions laid down in his appointment letter. He has quoted government instructions issued by the Ministry of Home Affairs under O.M. No.4/10/66/ES TS/(C) dated 26.8.1967 according to which termination of service of a probationer cannot be made under the provision of Rule 5 of CCS(TS) rules, but the same can be done in terms of the condition laid down in the letter of appointment. The applicant has further stated that he has already become over-age and he will not get further employment in case he is thrown out of ~~from~~ service.

3. The respondents have appeared and contested the case by filing Counter affidavits. Initially they filed short counter in which contention is that the applicant was appointed on temporary basis on a temporary post on 2 years' probation and it was also made clear that during the probationary period, if the applicant was found unfit his services shall be terminated immediately without assigning any reason. This condition was made clear in the Appointment letter itself. The applicant, therefore, had no right to continue as probationer in spite of poor performance, which was the reason for the termination of his services. It is further stated that in ^{the} absence of any specific order of confirmation, the applicant remained on probation and, therefore, his services could ~~not~~ be terminated by issue of one month's notice under Rule 5(1) of CCS(TS) rules.

4. It has further been brought out by the respondents that due to applicant's prolong^{ed} absence

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from duty and poor performance, he could not earn satisfactory ~~probation~~ report for the first year of probation from 11.6.1990 to 10.6.1991. Extract of the adverse remarks were communicated to him in writing. He could also not earn satisfactory probation report in the second year from 11.6.1991 to 10.6.1992. The report was forwarded to E.M.E. (Records) vide Unit letter dated 5.4.1992 after communicating the extract of adverse remarks on the report of second year also to the applicant. Thereafter his probation period was extended by one year from 11.6.1992 to 10.6.1993. However, even after completion of 4 years of probation, neither the performance of the applicant nor his attendance improved and, therefore, he could not earn satisfactory reports. It is stated that the period of absence of the applicant was regularised by grant of extraordinary leave without pay as the applicant had produced medical certificate. Apart from communicating of the adverse remarks, the applicant was also advised in writing that if he continued to remain absent from duty and did not improve his performance, his services were likely to be terminated due to unsatisfactory performance during the period of probation. Since there was no improvement in his performance, reports for the entire period of probation was put up before the Departmental Promotion Committee on the basis of whose recommendation, applicant was not found fit for further retention in service. The decision in this regard was communicated by the Ministry of Defence on 28.1.1997 ^{through} ~~and~~ the Army Headquarter ~~and~~ based on which the impugned order dated 17.2.1997 was issued.

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5. The respondents subsequently filed a detailed counter affidavit, re-iter^{ating} substantially the same contentions as made in the short counter affidavit, ~~having been reiterated~~. They have also brought on record that as per existing rule, period of probation can be extended upto 4 years and that specific orders are to be issued for confirmation of a probationer and until such orders are issued, probationer continues on probation. A reference has been made in this regard to the instructions contained in Ministry of Home Affairs (Department of Personnel and A.R.) Office Memorandas dated 19.5.1983, 24.2.1984, 5.12.1984 and 26.4.1989. They have also annexed copies of the assessment report in respect of the applicant during the period of probation, as well as copies of certain letters by which the applicant was advised to improve his attend^{ance} and performance with a caution that otherwise his services are likely to be terminated.

6. The applicant has filed a short rejoinder affidavit as well as detailed rejoinder affidavit. Apart from reiterating contentions in the O.A., it has been stated that it was incorrect on the part of the respondents to say that the applicant was appointed purely on temporary basis on a temporary post. He has again asserted that as he had already completed maximum permissible period of probation period and continued thereafter for nearly six and half years, his services could not have been terminated in the manner in which it has been done by the impugned order.

7. During the course of arguments, learned counsel for the applicant stressed upon the plea that the maximum period of probation being four years, the same could not be extended any further. Thus once period

15/2

(15)

of 4 years was over, the applicant should be deemed to have been confirmed. He mentioned that the applicant's name also appears in the seniority list and this would indicate that he was being treated as a regular employee. He next argued that CCS (TS) rules cannot be applicable to the probationer as the probationer is not a temporary employee. His next line of argument was that the impugned order was in fact a punitive order in the garb of an order simpliciter. In this regard, he relied on the decision of the Hon'ble Supreme court in case of State of Bihar V/s Shiva Bhikshuk Mishra 1970 SLR 863 and Anoop Jaiswal V/S Govt. of India A.I.R. 1984 SC 636. He also pleaded violation of Article 14 of the Constitution, inasmuch as the impugned order was passed arbitrarily by the respondents. Finally he also took the plea of violation of ^{the} doctrine of legitimate expectation in his support ~~XXXXXXXXXXXXXXXX~~ relying on the decision of Hon'ble Supreme court in the case of Union of India V/s Hindustan Development Corporation JT 1993 (3) SC 15

8. The learned counsel for the respondents on the other hand argued that in absence of specific order confirming the applicant, he continued to be on probation and, therefore, his services could be terminated in terms of provisions contained in CCS (TS) rules which are also applicable to probationer. He argued that there is no concept of automatic confirmation of a Probationer by efflux of time. He also stated that the service of the probationer can always be terminated during the period of probation on the ground of unsatisfactory performance. He relied on the decision of K.V.Krishnamani V/s Lalit Kala Academy JT 1996(6) Sc 312 Jai Kishan V/s Commissioner of Police A.I.R. 1996

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SC 660 and State of Himachal Pradesh V/s Suresh Kumar Verma and another A.I.R. 1996 SC 1565.

9. We gave our anxious consideration to the rival pleadings on record as well as the arguments advanced by the learned counsel for both the parties.

10. The applicant was admittedly appointed on probation for a period of 2 years. A copy of the Appointment letter has been placed at annexure A-1. We quote below the text of the Appointment letter dated 11.6.1990 as well as the relevant conditions of appointment :-

" The terms and conditions of service in respect of the candidate to be appointed to the post of Storekeeper in the Corps of B M E

1. You will be appointed in this unit as a Storekeeper against temporary post at the rate of Rs.950/- pm in the scale of pay of Rs.950-20-1150 EB-25-1500 post of Storekeeper has been classified as Non-Industrial and you will be governed by the terms and conditions of service briefly given in the succeeding paragraph

2. You will be on probation for a period of two years from the date of your employment and during the probationary period if you are found unsuitable your services may be terminated immediately without assigning any reason.....

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11. It is clear from the letter of appointment extracted above that the applicant was appointed on probation for 2 years in a temporary vacancy on a temporary post. It is also clear that the applicant's period of probation was extended ~~also~~. The extract of the report would indicate that the applicant's attendance as well as performance were found unsatisfactory and, therefore, he was advised from time to time to improve his performance and was cautioned that failing which his services would be terminated during the period of probation. From the perusal of various documents on record, we have no manner of doubt that the motive for terminating the services of the applicant was unsatisfactory performance of the applicant and, therefore, if the applicant was on probation, it certainly constitute a valid reason for termination of his services. If any decision is required to be cited in support of this proposition, it will suffice to refer to the decision of Hon'ble Supreme court in the case of State of U.P. V/s Kaushal Kishore Shukla (1991) 16 ATC 498, ^{fact that} in view of ~~the~~ the impugned order ~~order~~ of termination is wholly innocuous and without any stigma.

12. The learned counsel for the applicant cited decision of Hon'ble Supreme court in Anoop Jaiswal as well as Shiv Bhikshuk Misra cases in support of his contention that even if the impugned order had no express word of stigma it was to be treated as punitive in nature as the same is founded on misconduct. In our view neither of the decisions would be applicable to the case before us as the

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facts in those cases are totally different. In those 2 cases, the orders were founded on misconduct and therefore, were set aside by the Hon'ble Supreme court. In the case before us, reasons for termination of services is unsatisfactory performance on the part of a probationer and is, therefore, valid ground for termination of his services in view of the decision rendered in Kaushal Kumar Shukla which has been followed in several subsequent decisions given by the Hon'ble Supreme court.

13. In the case of Jai Kishan, cited by the learned counsel for the respondents, the Hon'ble Supreme court inter-alia held that failure on the part of a probationer to improve performance in spite of being kept on probation for longer period than the prescribed in rules would justify termination of his services. Similarly in K.V. Krishnamani case, which was also cited ~~cited~~ by the learned counsel for the respondents, the Hon'ble Supreme court inter-alia held that the very object of the probation is to test the suitability and if the Appointing authority finds that the candidate is not suitable, certainly ^{he} has the power to terminate the services of the employee. Decision in the case of Suresh Kumar Verma cited by the respondents does not, however, appear to be relevant to the controversy before us as the same is on the basis of entirely different set of facts.

14. We next come to the question as to whether the applicant could be deemed to have been confirmed on the post of Store-keeper by efflux of time beyond the permissible period of 4 years in this regard

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We have gone through various office memoranda issued by Nodal Ministry of the Govt. of India, which have been reproduced in Swami's compilation of orders of Establishment and administration. These office memoranda, reference of which have already been made in the counter affidavit filed by the respondents, clearly stipulate that as long as no specific order of confirmation or satisfactory completion of probation is issued to a Probationer, such probationer ^{shall be} deemed to be on probation.

15. The question as to whether a Probationer can be deemed to have satisfactorily completed the period of probation and thus confirmed on the post on completion of the period of probation including the extended period of probation came up before the Hon'ble Supreme court in case of Sukhbans Singh V/s State of Punjab ^{AIR} (1962) Sc 1711. In that case appellant continued to be on probation for a long time after expiry of period of probation ~~and~~ ^{and} normal period of extension. The Hon'ble Supreme court ~~has~~ held that in such a situation, a Probationer cannot ^{automatically} acquire status of a permanent member of a service unless rules under which he has sought exemption ^{expresssively} provide such a result. This decision was followed by the Hon'ble Supreme court in the case of State of U. P. Versus Akber Ali Khan A.I.R. 1966 SC 1842 and State of Punjab Versus Dharam Singh A.I.R. 1968 SC 1201.

16. The aforesaid question also came up before Hon'ble Supreme court in Jai Kishan's case. The Hon'ble Supreme court held that successful completion of probation is a condition precedent for confirmation

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and in case the authorities have given a Probationer more period than the maximum period of probation so as to see whether he improves his performance in service, they have the power to do so.

17. From the facts before us, it is clear that beyond period of 4 years, no specific order of extension of probation was issued. The applicant was allowed longer time to improve his performance. No specific order was also passed for confirming the applicant. No rule has been cited before us by which the applicant could be deemed to have completed period of probation satisfactorily on completion of maximum permissible period of ^{probation} performance. In this situation we have no manner of doubt to conclude that the applicant continued on probation even after the extended period of probation expired and therefore, his services can be terminated on the ground of unsatisfactory performance. The decision of Hon'ble Supreme court in case of State of Punjab V/s Dharam Singh A.I.R. 1968 SC 1201, which has been cited by the learned counsel for the applicant in O.A. would not be applicable to the facts of the present case since unlike Dharam Singh, there is no service rules cited before us which fixes specific period beyond which probationary period cannot be extended.

18. We now come to the plea taken by the learned counsel for the applicant that CCS(TA) rules ^{cannot} ~~can~~ be applicable to a Probationer. We have in this regard certain pronouncements by the Bombay High court in case of Ishverlal Naik V/s S.C. Arya (1984) 1 SLJ1(BOM). In the aforesaid case, Bombay High court held that as government servant on probation has not been included

in sub-rule 4 of Rule I of CCS(TS) rules and has, therefore, not been excluded from the purview of the CCS(TS) rules. Such rule would apply to all government servants, who are not permanent. We are in respectful agreement with the aforesaid view. The applicant Probationer, was not a permanent employee and, therefore, the question of non-applicability of CCS(TS) rules to him does not arise.

19. We lastly come to the plea taken by the applicant that the doctrine of reasonable expectation has been violated in this case. In the case of Union of India v. Hindustan Development Corporation cited by the learned counsel for the applicant, Hon'ble Supreme court considered all the ~~statutes~~^{facts} of reasonable expectation. We quote relevant portion of the judgment:-

"For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectations should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."

20. In view of the authoritative explanation as to what reasonable expectation is, we need hardly emphasise that the facts in the present case before us do not contain necessary elements for presuming that the applicant had a reasonable expectation in absence of any sanction of law or custom by which Probationer shall automatically be confirmed on completion of the period of probation. We are, therefore, unable to agree

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with the doctrine of legitimate expectation having been violated in this case.

21. In view of the detailed reasons given above, we find no reasons for interference in the order impugned. Before parting with the case, we would like to observe that the applicant continued in service during which he became overage for any other service under the Government of India. However such a situation cannot influence us in giving decision in favour of the applicant as ours is not a court of *equity* but a court which only enforces a right which has accrued to the litigant by the operation of some rule. The applicant can, however, make an appeal to the competent authority on compassionate ground and if he does so it would be open to the respondents to give due consideration to the appeal.

22. With the above observations, this application is dismissed, leaving the parties to bear their own costs.

J. Verma
Member (J)

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Member (A)

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