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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 1014 of 1987

Umrao Chaube Petitioner.

Versus

The Regional Director, ESI Corp.
(U.P.Region),Kanpur & another Respondents.

Hon'ble D.K. Agrawal, J.M.
Hon'ble Balasubramanian, A.M.

(Delivered by Hon. Balasubramanian, A.M.)

This writ petition, originally filed in the High Court of Judicature at Allahabad, has been received on transfer to this Tribunal under Section 29 of the Administrative Tribunals Act,1985.

2. The petitioner, Sri Umrao Chaube, who was a Peon, was initially promoted as Lower Division Clerk (LDC) on 7.9.1976 on a purely temporary ad hoc basis. Subsequently by an order dated 20.1.1978 he was promoted on a regular basis as LDC and placed on probation for a period of two years from the date of regular appointment. Subsequently, by an order dated 16.12.1980 (Annexure '3' to the petition), the probation was extended by one year upto 19.1.1981. The probation was extended because of the imposition of two penalties, one on 31.5.1978 and another on 25.2.1980 and also on account of his facing disciplinary action for major penalty. The applicant has contended that normally his probation should have come to an end on 20.1.1979 and that if his performance was below mark he should have been informed of the same and given an opportunity to make special efforts for improvement. This is a requirement under Regulation 5 of the Employees' State Insurance Corporation (Staff and Condition of Service) Regulations, 1959. The applicant has also contended that according to the same Regulation 5 if probation was to be extended such a decision should have been taken

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within a period of two months after the expiry of the period of probation and have been communicated to him together with the reasons for such extension. In the instant case the decision had been taken only on 16.12.1980 and not before 20.3.1979, as required under the Regulation. Thus the applicant's contention is that the decision to extend the probation was belated and also did not give him an opportunity to make special efforts for improvement. Subsequently, by an order dated 17.1.1981 (Annexure '4' to the petition), the applicant had been reverted as a Peon because he did not complete the probation satisfactorily even after the extension of probation and also on account of disciplinary proceedings for major penalty pending against him. The applicant has also pointed out that the reversion is not mere reversion simpliciter and that it is for cause and casts stigma against the applicant. He, therefore, treats this as an order of punishment and that the respondents have not followed the rules for imposition of the punishment of reversion. He has prayed that the order dated 17.1.1981 reverting him as a Peon be set aside, that he should be promoted as LDC and also confirmed as a LDC.

3. In the reply, the respondents have stated that though ordinarily the probation would have been completed on 20.1.1979, in the instant case that was not so because disciplinary proceedings were pending against the petitioner and also that by an order dated 31.5.1978 the penalty of withholding two increments was in operation at the time the official was due to complete the two years' probation. The respondents have also contended that the decision to extend the probation could not be taken within the two months' period stipulated under the Rule because disciplinary proceedings were in progress and all the relevant documents pertaining to the official were all lying in the Corporation's Headquarter at New Delhi. They have also contended that there was no need to inform him of his extended short-coming because disciplinary proceedings were also reverted to progress and the official was well aware of this. The probationary

2. Baldev Singh

contended that the disciplinary proceedings initiated against the official was enough indication of the unsatisfactory performance due to which the probation was not considered complete. They have contended that the stipulation that the decision to extend probation should ordinarily be taken within two months of the due date, is only directory in nature and not mandatory. They have also indicated that in continuation of the penalty imposed on him by an order dated 31.5.1978 there was yet another case in which he was awarded a minor penalty on 25.2.1980. They have also repeated that he had not completed the probation satisfactorily even after extension of probation upto four years. They have also pointed out that in addition to the earlier two minor penalties a major penalty of reducing him by three stages in the scale of pay as Peon has also been inflicted on him by an order dated 5.6.1982 (Annexure 'F' to the counter affidavit).

4. The applicant in his rejoinder affidavit had pointed out that the order of penalty dated 31.5.1978 had since been set aside by the Chairman, Standing Committee of ESI Corporation vide his order dated 3.12.1981.

5. We have heard the learned counsel for the parties and have examined the case. The fact that the official had already been awarded two minor penalties and subsequently a major penalty shows his unsatisfactory performance. The two minor penalties had been inflicted on him when he was still functioning as a LDC on probation. The major penalty had, of course, been inflicted on him after he was reverted as a Peon. We find the explanation for the delay in the decision to extend probation acceptable. We now come to the question whether the reversion ordered on 17.1.1981 is a reversion simpliciter or a punitive one. The order dated 16.12.1980 extending the probation states that on account of the penalties in operation and that contemplated, his probation had been extended upto 19.1.1981. The order dated 17.1.1981 by which he was reverted from LDC to Peon states that he had not completed his probationary

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period satisfactorily even during the extended period of two years. Besides this reason they had also mentioned about the major penalty proceedings in progress. It is the reference to the disciplinary proceedings and penalties in the orders for extension of probation as well as in the order of reversion that has given rise to a doubt that the reversion may be punitive. The competent authority had no doubt found his performance unsatisfactory and had, therefore, extended the period and later reverted him. The mention about disciplinary cases in the order of reversion should not overshadow this fact. The failure of the respondents to bring to the notice of the applicant his unsatisfactory performance need not be made much of in this case since the applicant had been involved in a series of disciplinary cases and the possibility of improvement was rather remote. We are, therefore, of the opinion that the action of the competent authority is in order and the petition is, therefore, liable to be dismissed.

6. The petition is accordingly dismissed without any order as to costs.

U. Balasubramanian
MEMBER (A). 2817/81

D.K. George
MEMBER (J).

Dated: July 28th, 1989.

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