

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application no. 1114 of 1989
Transfer Application no. _____

Date of Decision 21/4/97

Kunwar Singh

Petitioner

Sri Arvind Kumar

Advocate for the
Petitioner

V E R S U S

Union of India and Ors.

Respondents.

Km. Sadhna Srivastava

Advocate for the
Respondents.

C O R A M

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. I.L. Verma, J.M.

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 Lordship wish to see the fair copy of the judgement ? Yes
4. Whether to be circulated to all Bench ?

Signature

PIYUSH/

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 21st Day of April, 1997

Original Application No. 1114 of 1989

District : Kanpur

CORAM :-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Varma, J.M.

Kunwar Singh S/o Shri Sardar Singh,

Overseer, Store Receipt,

Ordnance Equipment Factory,

Kanpur-

(By Sri Arvind Kumar, Advocate)

. Applicant

Versus

1. Union of India through
The Secretary Defence Production,
Government of India, Ministry of Defence,
South Block, New Delhi.
2. Chairman Ordnance Factory Board,
10-A, Auckland Road, Calcutta.
3. The General Manager,
Ordnance Equipment Factory,
Kanpur.

(By Km. Sadhna Srivastava, Advocate)

. Respondents

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O R D E R

By Hon'ble Mr. S. Das Gupta, A.M.

This OA has been filed seeking a direction to the respondents to retain the appellant on the post of Asst. Store Keeper (now designated as Store Keeper) on which post he was appointed and also to pay the applicant all consequential benefits.

2. The facts leading to the filing of this case may be stated at the outset. The applicant was working as an Overseer 'B' in Ordnance Equipment Factory, Kanpur. The General Manager of the factory published a notification inviting applications for filling up of the vacancies of the Assistant Store Keeper. The applicant who was also a candidate for one of these posts appeared in the written test and interview conducted by the General Manager and was declared successful. He was thereafter appointed as Asst. Store Keeper w.e.f. 2-2-1981, on probation for a period of two years. By an order dated 19-3-1983, the period of probation of the applicant was extended by six months. Thereafter, the period of probation was extended several times and finally by an order dated 6-2-1985, he was reverted to the post of Overseer. An appeal against this order was rejected by an order dated 28-9-1988. Seeking quashing of both these orders, the applicant has filed this present application for the aforesaid reliefs.

3. The applicant has not specifically set out the grounds on which he is challenging the order by which he was reverted to the post of Overseer. The only reason which appears to have been mentioned is that the General Manager Ordnance Equipment Factory was neither the appointing authority nor the disciplinary authority in respect of the applicant and hence the order passed by him reverting him to the post of Store Keeper is illegal. He has also stated that he was never served with any warning either in writing nor verbally by the General Manager during the period of probation and therefore he should be deemed to have been automatically confirmed on the expiry of two years' period.

4. The respondents have contested the case by filing a counter affidavit in which it has been stated that the applicant was given the post of Asst. Store Keeper on 2-2-1991 and was placed for probation of 2 years. On completion of probationary period his work and performance was assessed by the Divisional Officer and the Group Officer and a recommendation was made for extension of the period of probation for six months and accordingly the order dated 19-3-1983 was issued extending his probation by six months and also a letter dated 28-3-1983 was issued advising him to improve his performance. Meanwhile, the applicant was awarded penalty of stoppage of increment for a misconduct and the said penalty was

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operative w.e.f. 1-2-1983. He was also placed under suspension u.e.f. 23-2-1983 for misconduct, unruly behaviour and use of threatening language. In view of the penalty imposed on the applicant as well as the disciplinary action in train and also in view of the unsatisfactory performance of the applicant, his probationary period was further extended for a second time for a period of six months and he was again asked to improve his performance by means of a letter dated 16-8-1983. As he did not improve his performance, he was transferred to a different section on 4-3-1983. Thereafter, ~~xxx~~ further extension of probationary period was ordered in view of his continued unsatisfactory performance and he was again asked to improve his performance by letter dated 15-2-11984. He was also transferred to another section to work under a different officer to give him an opportunity to show improvement in his performance but even then his performance was not found satisfactory and also a disciplinary action under Rule 14 CCS(CCA) Rules 1965 was initiated against the applicant. The applicant's probationary period was further extended by six months till 1-2-1985 and he was again asked to improve his performance and he was warned that otherwise he would be reverted to his post of Overseer. During this spell of the extended probationary period also, the applicant's performance was unsatisfactory and moreover there were two disciplinary proceedings

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under Rule 14 of the CCS (CCA) Rules initiated against him, one of which was for tampering with the official documents and the other for negligence of duties having direct bearing on his performance. He was, therefore, reverted back to the post of Overseer w.e.f. 1-2-1985 by an order dated 6-2-1985.

5. The applicant filed a rejoinder affidavit in which he stated that he was not informed as to what lapses or shortcomings were there in his performance during the probationary period. In the absence of such information, he could not know what were his lapses and therefore could not be expected to show improvement. As regards the disciplinary action, taken against him or pending against him, he has stated that this was not a bar on confirming him on the post of Asst. Store Keeper. He has further stated that since he was directly appointed on the post of Assistant Store Keeper after the process of selection, he could not have been reverted to the post of Overseer as he was not promoted from the post of Overseer to that of Asst. Store Keeper. As such, the order of reversion is illegal and beyond the jurisdiction of the authority.

6. We have heard the arguments advanced by both the parties and also carefully perused the pleadings on record.

7. Sri Arvind Kumar, learned Counsel for the applicant laid great stress on three grounds during

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the course of arguments, In the first place, he argued that on completion of two years' probation period, the applicant should have been deemed to have been confirmed on the post of Assistant Store Keeper as there was a gap between the date of completion of two years' period and the date of the order by which his period of probation was extended. The second limb of his argument was that he could not have been reverted without being informed of the lapses committed by him during the period of probation. Lastly, he argued that in any case the applicant could not have been reverted to the post of Overseer as his first appointment was on the post of Asst. Store Keeper. We propose to deal with all the three grounds taken ad seriatim.

9. So far as the plea of automatic confirmation on completion of the probation period is concerned, the plea has no force as the law on the departmental rules do not countenance a concept of deemed confirmation. The Hon'ble Supreme Court has unequivocally held in the case of S. Sukhbans Singh vs. State of Punjab, AIR 1962 S.C. 1711 that a probationer does not automatically acquire the status of a permanent employee on expiry of probation period. This has been consistently followed in the subsequent decisions of the Hon'ble Supreme Court, of which mention can be made of a recent decision in Satya Narayan Athya vs. High Court of M.P., AIR 1996 S.C. 750 in which it was inter alia held that a probationer can not be deemed to be confirmed automatically and until specific order

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is passed, he is deemed to have continued on probation.

9. In respect of his second limb of the argument, the learned counsel for the applicant sought reliance on the decision of Dr. (Mrs) Sumati P. Shere vs. Union of India and Others, 1989 S.C.C. (L&S) 471. In the aforesaid case, the Hon'ble Supreme Court took the view that where termination of service is for unsatisfactory performance, prior communication of assessment of work to the affected person is essential. In the instant case there is no denial by the applicant that the respondents on four occasions advised the applicant to improve his performance. The only plea taken by the applicant is that he was not informed of the nature of the lapses or their effect on his performance. We do not find any support for a proposition that the nature of the lapses must be communicated. In Dr. (Mrs.) Sumati P. Shere case the operative portion of the order in this regard reads as follows, "it is proper and necessary that she should be told in advance that her work and performance are not upto the mark." In our view by repeatedly communicating to the applicant and advising that he must improve his performance, the respondents have given ample opportunity to the applicant to mend his ways and the requirement laid down in Sumati P. Shere case has been complied with. In case the applicant wanted to know the nature of his shortcomings, he could very well have asked the authorities concerned to give him the feed back in this regard. Although

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the applicant has stated in his rejoinder affidavit that he wrote a letter dated 27-4-1983 asking the respondents as to what type of shortcomings were there on the part of the applicant, we find from the aforesaid letter at Annexure-RA-1 to the rejoinder affidavit that he had merely made a statement that no specific shortcoming was pointed out, which omission, according to him was highly objectionable. There is nothing in this letter to indicate that he was genuinely interested in finding out what his shortcomings were so that he could take corrective measures. We are, therefore, unable to hold that the action of the respondents was vitiated by not having communicated the nature of lapses to the applicant.

10. We now come to the last plea taken by the learned counsel for the applicant. In this regard he sought reliance on a decision of the Hon'ble Supreme Court in the case of Nyadar Singh vs. Union of India, A.I.R. 1988 S.C. 79. In the case of Nydar Singh, the Hon'ble Supreme Court held that the penalty of reduction to a higher time scale, grade, service or post to a lower time scale, grade, service or post virtually amounts to his removal from higher post and substitution of his recruitment to the said lower post, affecting policy of recruitment itself. In that case the appellant was reduced in rank from the post of Asst. Locust Warning officer, to which post he directly recruited and confirmed, to that of Junior Technical Assistant, pursuant to certain disciplinary proceedings

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held against him. It will be thus seen that in the case of Nyadar Singh, the reversion to lower post was by way of penalty as a result of disciplinary proceedings with not as a consequence of termination of service during probation period. In the case before us, the applicant was reverted to the post of Overseer not as measure of penalty. All that it happened, was that he was found unsuitable to continue on the post of Asst. Store Keeper on which post he was no doubt appointed (and not promoted) on probation. The respondents, therefore, had a right to terminate the services of the applicant during the initial period of probation or during the extended period of probation. Such a right has been recognised in various decisions of the Hon'ble Supreme Court. It is now settled law that the services of a probationer can be terminated by a simpliciter order, as long as such order is not stigmatic, on the basis of unsatisfactory performance during the period of probation. This proposition of law has been laid down by the Hon'ble Supreme Court in no uncertain terms in the case of State of U.P. vs. Kaushal Kishore Shukla, 1991 SCC (L&S) 587. No doubt, the respondent in that case was a temporary Government servant appointed on adhoc basis, but the proposition of law laid down therein would be equally applicable to a probationer. This proposition has been reiterated from time to time in a catena of subsequent decisions. Reference in this regard can be made to Triveni Shanker Saxena vs. State of U.P. & Ors, 1992 SCC(L&S) 440 and State of Orissa

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vs. Jyoti Ranjan Kar, 1996 SCC (L&S) 220(I).


11. We have already seen that the performance of the applicant before us during the period of probation was found to be unsatisfactory. His period of probation was extended several times to give him opportunity to improve his performance. He was repeatedly advised to improve his performance. He was even shifted from one section to another and yet his performance, according to the respondents, did not show improvement. In such a situation, the respondents would have been perfectly justified to pass simpliciter order terminating the services of the applicant. The respondents, however, did not make him join the rank of unemployed persons. They allowed him to come back to the post of Overseer which he was occupying prior to his appointment as Asst. Store Keeper. In that sense, the word 'reversion' used is really a misnomer. It is certainly not by way of disciplinary action in which case, no doubt, the principle laid down in Nyadar Singh case would have come into play. The respondents had two options. They could have simply terminated the services of the applicant and rendered him unemployed or they could have terminated his services as Assistant Store Keeper and allowed him to work as Overseer on the post he earlier held. By choosing second option, the respondents have actually shown compassion to the applicant and if the applicant does not want to work on the post of Overseer, the

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only alternative for him will be to remain out of employment. We, therefore, do not see any violation of the principles of law laid down in the case of Nyadar Singh.

12. In the ~~context~~^{context} of facts and circumstances of the case, we find no merit in any of the pleas taken by the applicant. The application, therefore, fails and the same is accordingly dismissed, leaving the parties to bear their own costs.


Member (3)


Member (4)

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