

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 13 DAY OF May 1996

Original Application No. 1143 of 1995

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR. S.DAS GUPTA, MEMBER(A)

Karnail Singh Premi, aged about 25 years
son of Late Medai Lal, resident of
Qr, No. I/H/14, Estate Ordnance Clothing
Factory, Shahjahanpur, previously employed as
Durwan, Ex. T.No.920/N
Security Office, Ordnance Clothing
Factory, Shahjahanpur.

Applicant

BY ADVOCATE SHRI N.K. NAIR

Versus

1. Union of India, through its Secretary
Ministry of Defence, Department of
Defence Production, Govt. of India
New Delhi.
2. Additional Director General,
Ordnance Factories, O.E.F Group Head
Quarter G.T.Road, Kanpur
3. General Manager, Ordnance Clothing
Factory, Shahjahanpur.
4. Estate Officer, Ordnance Clothing
Factory, Shahjahanpur

Respondents

BY ADVOCATE SHRI AMIT STHALEKAR

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

The applicant was admittedly appointed as Durwan of
the Ordnance Factory Shahjahanpur by order dated
11.3.92, copy of which is Annexure A-6. His appointment
was on probation for a period of two years. The
applicant's case is that he was posted as Durwan attached
to the Security office. ~~to Lt. Colonel~~ Lt. Colonel
K.G.Thapa was the Security officer. So long as
Lt.Col.Thapa was Security officer of the Factory there
was no complaint with regard to the work and conduct of

the applicant. After the transfer of Lt.Col. Thapa Lt.Col. G.S. Bisht took over as Security Officer. Certain vague averments have been made in the OA to support the plea that Shri Bisht did not remain well disposed towards the applicant since the applicant had refused to perform his personal domestic work. The main plank of the applicant's case is that the two year period of probation expired on 13.3.94. It was not extended hence thereafter the applicant would be deemed to have acquired status of temporary employee as per terms and conditions of the appointment contained in the appointment letter.

2 charge sheets have been issued to the applicant for some acts of misconduct. However, by an order dated 28.9.94 the applicant's services were terminated on the ground that his performance was not found satisfactory during the probation period. He did not show any improvement in his performance instead of giving suitable advice to him. This order has been challenged besides the order dated 31.5.95, rejecting the appeal has also been challenged.

2. A detailed counter affidavit has been filed on behalf of the respondents. The applicant had filed a rejoinder affidavit.

3. We have heard the learned counsel for the parties.

4. The learned counsel for the applicant submitted that the applicant's period of probation expired on 13.3.94 and the same was not extended and therefore in terms of the appointment letter the applicant acquired the status of a temporary employee and his services could have been terminated only by way of punishment after complying with the legal formalities connected thereby as

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or by giving notice as required.

5. The appointment letter is Annexure 6. It clearly stipulated that the applicant would be on probation for a period of two years from the date of appointment. Clause(b) of the terms and conditions in the said appointment letter reads as follows:

(b) After the satisfactory completion of probationary period your appointment and service will be temporary.

(c) The appointment letter shows that the applicant's services could be terminated at any time during the probationary period by either side without notice.

(d) After probationary period the termination of your service will require one month notice in writing on either side.

6. The order of termination was passed on the basis that the applicant's performance during the probationary period was not satisfactory and despite suitable advises, he had shown no improvement. This order had been passed after expiry of the probationary period. The respondents in their counter affidavit have in para 3 indicated that the applicant's performance report remained as under:

(a) He absented from duty place unauthorisedly and disobeyed orders of senior in the month of September, 1992 for which explanation from him was called for and after considering his reply sympathetically he was warned for this lapse vide staff order dated 17.9.92.

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- (b) He was charge-sheeted under Rule 16 vide Memo dated 31.12.1993 for misbehaviour and using abusive language
- (c) He was again chargesheeted under rule 16 vide Memo dated 12.2.94 for missing from duty place.
- (d) Chargesheet under Rule 14 was also issued vide memo dated 12.5.94 for gross misconduct concealing/suppressing the facts regarding loss of his permanent Security pass. He never reported the matter to the police nor any information has been given to the factory management.

7. Two probationary period reports dated 15.3.94 and 16.9.94 have also been annexed alongwith the counter affidavit. It is admitted between the parties that the probationary period was extended for six months from 14.3.94 to 13.9.94 vide F.O. Part II No. 1423 dated 16.5.94 and he was intimated vide letter dated 18.8.1994. In the counter affidavit the respondents have further pleaded that since the applicant's services have been terminated as per terms and conditions as mentioned in the appointment letter as such Disciplinary proceedings taken against him has been kept in abeyance.

8. The respondents have placed reliance ^{on some} ~~containing~~ provisions based on Govt. of India MHA O.Ms. ^{The} relevant portions on which reliance is placed provides that:

"On the expiry of the period of probation steps should be taken to obtain the assessment reports on the probationer and to-

- (i) Confirm the probationer/issue orders regarding satisfactory termination of probation, as the case may be, if the probation has been completed to the satisfaction of the Competent Authority; or
- (ii) Extend the period of probation(in terms of para 1(viii) of the O.M. dated, the 15th April, 1959) or discharge the probationer or terminate the services of the probationer, as the case may be, in accordance with the relevant rules and orders, if the probationer has not completed the period of probation satisfactorily

9. The learned counsel for the applicant submitted that since the period of probation had not been extended in terms of the appointment letter immediately on expiry of the period of probation stipulated in the order of appointment the applicant acquired the status of a temporary employee. We have already extracted the relevant conditions of service indicated in the appointment letter. Clause(b) stipulates that the applicant's services will be temporary after the satisfactory completion of the probationary period. Thus the question arises whether even if no decision is taken before expiry of the prescribed period of probation as to whether or not the period of probation has been satisfactorily completed, the incumbent would acquire the status other than a probationer.

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10. The learned counsel for the respondents invited our attention to a Supreme Court decision reported in 1985 S.C. 603 Dhanjibhai Ramjibhai Vs. State of Gujrat. In the said decision their Lordships of the Hon'ble Supreme Court ~~took~~ ^{considered} the plea that since no rules have been framed indicating the manner for extending the period of probation there is no power to extend the probation. They held that the argument was fallacious and observed:

" The power to extend the period of probation must not be confused with the manner in which the extension may be effected. The one relates to power, the other to mere procedure. Merely because procedural rules have not been framed does not imply a negation of the power. In the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, having regard to the context in which the power has been granted."

It was held:

" The function of confirmation implies the exercise of judgment by the confirming authority on the overall suitability of the employee for permanent absorption in service.

11. Another significant observation made in the said case was while dealing with the contention that a distinction should be drawn between a probationer whose services are terminated on the expiry of the period of two years, and a probationer who has completed the normal span of two years and whose services are terminated some time later after he has put in a further period of service. Their Lordships observed:

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" we are unable to see any distinction. It is perfectly possible that during the initial period of probation the confirming authority may be unable to reach a definite conclusion whether the candidate should be confirmed or his services should be terminated. Such candidate may be allowed to continue beyond the initial period of two years in order to allow the confirming authority to arrive at a definite opinion. It seems to us difficult to hold that a candidate enjoys any greater right to confirmation if he is allowed to continue beyond the initial period of probation."

12. The Ministry of Home Affairs O.M. dated 15.4.89 lays down the general principles and it was indicated that fresh entrants to the service as well as those promoted should be kept for probation for a period of two years to judge the potentiality of an officer for a higher service. The said O.M. further provides that the date from which confirmation should be given effect to is the date following the date of satisfactory completion of probation or the extended period of probation as the case may be. It is also provided the decision to confirm the probationer or to extend the period of probation should be communicated to the probationer normally within six to eight weeks. The O.M. also indicates that confirmation of the probationer after completion of the period of probation is not automatic but is to be followed by formal orders. So long as no specific orders

of confirmation or satisfactory completion of probation are issued to a probationer, such probationer shall be deemed to have continued on probation. The instructions ofcourse do not indicate the period upto which the probation could be extended. But all the same, the said instruction clearly provide that unless an order of confirmation is passed or an order indicating satisfactory completion of probation is passed the probationer shall be deemed to have continued to be on probation.

13. In the present case no order of confirmation had been passed on expiry of initial period of two years probation. We are of the opinion that in the absence of any statutory rule indicating the period of probation cannot be extended beyond a specified period the authorities would not be barred from extending the period of probation. In this behalf we may refer to a decision rendered by the Principal Bench of the CAT reported in 1995(29) ATC 753 P.K.K. Pillai Vs. Union of India and Ors though it was not cited by the learned counsel for the parties. In the said case the appointment order indicated that the applicant would be on probation for two years which could be extended at the discretion of the appointing authority. On 27.2.92, the probation was extended upto 27.2.93. he had been appointed on 7.3.89 and on 2.7.93 another order was issued further extending period of probation from 28.2.93 to 27.3.94. In the said case reference was made to Chapter XV at page 138 of Swamy's aforesaid complete Manual which indicated a decision of the Govt. of India 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."

In the said case the period of probation has been extended well after the date of expiry of the probationary period. Therefore, nothing material turns on the factual position that the order for extending the probation was passed much after the expiry of the period of probation . Unless an order for confirmation is passed a probationer would continue to be on probation. The respondents have indicated that the period of probation was extended to enable the applicant to improve his performance and even during the extended period of probation his performance as was to be found unsatisfactory. It has been indicated in the pleadings of the respondents that the order of termination had been passed on the basis of the special assessment report for the period of probation as also the extended period of probation and had nothing to do with the 2 charge sheets issued to the applicant in respect of alleged acts of misconduct. The applicant has not placed any material on record to dislodge the said averment. It may be useful to refer to a Supreme Court decision. The Hon'ble Supreme Court in S. Sukhans Singh vs State of Punjab reported in 1962 Supreme Court 1711 made the following observation which is relevant for our purposes. 1 Bd

" A probationer cannot, after the expiry of probationary period, automatically acquire the status of a permanent member of a service, unless ofcourse the rules under which he is appointed expressly provide that where a probationer is not reverted by the Government before the termination of his period of probation he continues to be a probationer but acquires the qualification for substantive permanent appointment."

14. In another decision in State of Uttar Pradesh Vs. Akbar Ali Khan AIR 1966 S.C. 1842 the following observation was made:

" The respondent did not cease to be a probationer after the expiry of the probation period. Without any specific order of confirmation he continued as a probationer only and acquired no substantive right to hold the post."

15. In our opinion it is thus well settled by catena of decision decided by the Hon'ble Supreme Court that unless the rules ^{so provide,} on mere completion of probation period a probationer does not stand confirmed against the permanent post. There has ^{to} ~~been~~ a declaration that he has satisfactorily completed and that he was against the substantive post, until then he continued as a probstioner."

16. In the present case as pointed out no service rule has been referred to which may govern the service conditions of the applicant much less than containing any positive provision prohibiting extension of the probationary period. The conditions of service indicated

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in the appointment letter cannot be raised to the status of Statutory rule. Even in the appointment letter there is no prohibitory stipulation restraining the authorities from extending the probation period. Thus we are satisfied that in the absence of any statutory rule the matter would be governed by the provisions in the various O.M.s issued by the Ministry of Home Affairs included in Swamy's Complete Manual on Establishment and Administration for central government offices.

17. The conditions in the appointment letter have to be read as a whole and ^{on} such reading it would be evident that it was only after satisfactory completion of probation period that the applicant could claim to have acquired temporary status and his services terminated with one month notice or pay in lieu thereof. Before the passing of the impugned order no order was passed which may indicate that the applicant had completed his probation satisfactorily.

18. The learned counsel for the applicant lastly submitted that the impugned order has been passed in colourable and malafide exercise of power and a short cut has been adopted to terminate the services of the applicant instead of holding and completing the Disciplinary proceedings initiated through the chargesheets issued to him.

19. The learned counsel cited the following decisions to indicate the law on the question as to when an order of termination simplicitor can be held to be punitive in nature while lifting the veil. The decisions are:

- (1) 1963(3)SCR 16 Madan Gopal Vs Union of India and Ors
- (2) 1964 SC 449 Jagdish Mittal vs. Union of India
- (3) 1971(1) SCC 790 K.G. Bhatnagar Vs.

(4) 1974 SCC(L&S) 550 Shamsher Singh Vs. State of Punjab

(5) 1991(3) SC 291 Om Prakash Vs. Himachal Pradesh Tourism Development Corporation.

(6) 1991 SC 1310 Babu Lal Vs. State of Haryana

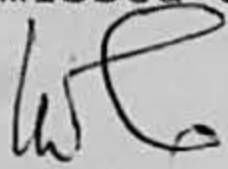
20. In our opinion there is no need to analyse the said decisions since we have already reached the conclusion and upheld the contention of the respondents that the order of termination has not been passed on the basis of the misconducts for which the 2 chargesheets have been issued to the applicant. They have been passed on the basis of the probationer period ^{assessment reports} dated 15.4.94 and 16.9.94, copies of which have been filed as Annexures CA-2 and CA-3. We have perused the said reports and we are satisfied that there has been no arbitrariness in passing the impugned order. The applicant failed to show improvement during the extended period of probation also and his performance was found unsatisfactory.

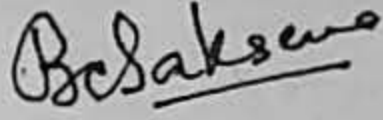
21. We may refer to a decision of the Principal Bench reported in 1995(31) ATC 277. Therein an order for termination for unsatisfactory performance during the probation had been passed in support of the conclusion for unsatisfactory performance reference was made to long unauthorised absence. In this context a plea was raised that the order ^{though} ~~for~~ simplicitor, ^{if} the veil ^{is} ~~should be~~ lifted ^{the} ~~and~~ motive behind the order would be evident. It was held that no disciplinary proceedings were warranted and the lifting of the veil and search for motive behind the order held was also not called for in every case otherwise Rule 5 CCS Temporary Service Rules would be rendered nugatory.)

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22. In view of the discussion hereinabove, no case for grant of relief is made out. The O.A. deserves to be dismissed and is accordingly dismissed. Cost easy.


MEMBER(A)


VICE CHAIRMAN

Dated: 13.5, 1996

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