

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 31st day of May, 2000.

Original Application No. 536 of 1999.

Hon'ble Mr. S.K.I. Naqvi, Judicial Member

Hon'ble Mr. M.P. Singh, Administrative Member

Prahlad Singh, Son of Shri Dal Chandra,

Divisional Accountant in Investigation

& Planning Division-II and Now Flood Division

Aligarh.

.....Applicant

C/A Shri Arun Tandon Advocate.

Versus

1. Union of India, through Secretary
Ministry of Finance Department of
Expenditure, New Delhi.

2. Accountant General (A & E)-II,
U.P. Allahabad.

3. Deputy Accountant General (Works)
Allahabad.

.....Respondents

C/R Km. S. Srivastava Advocate

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O R D E R

By Hon'ble Mr. M.P. Singh, A.M.

1. The applicant has challenged the order dated 21.4.1999 passed by the Deputy Accountant General (Works) Allahabad by which his services have been terminated from the Post of Divisional Accountant.

2. The brief facts of the case are that the applicant was appointed on 21.12.1994 on the post of Divisional Accountant in the pay Scale of Rs. 1400-2600 and was posted in Investigation and Planning Division-II World Bank, Aligarh. He was initially appointed on probation for a fixed period of two years as stipulated in the appointment letter itself. It is provided in that letter that the applicant will have to pass the Divisional Accountant Grade Examination within a period of probation and in case he is found unsuitable due to non-passing of Departmental Test/ Exams or due to indisciplined behaviour he shall be liable to be terminated. However, the applicant has been permitted to continue for nearly four and half years. His services have been terminated by the respondents vide their order dated 21.4.99.

3. The applicants case is that once the maximum period of probation is permitted to expire and the probationer is permitted to continue even thereafter, the right of the employer to terminate his services on the ground of not completing the period of probation upto the mark is lost.

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After the maximum period of two years of probation, the applicant stood confirmed and the further requirement of passing the Accountants Grade Examination stood relaxed. In view of the aforesaid, the order of termination is patently illegal and is based on misreading of the provisions of the appointment order. Aggrieved by this the applicant has filed this O.4. seeking direction to quash the impugned order dated 21.4.1999 and has also sought directions to respondents not to interfere in the working of the applicant on the post of Divisional Accountant.

4. The respondents in their reply have stated that as per paragraph 7.7. of the CAG Manual of Standing orders, the period of training will be of two years. They will be allowed to appear in the Divisional Accountant Grade Examination only after a training of at least one year. In view of aforesaid provision the above two years trainees official are called as probationers. It is well settled law that unless and until the order for confirmation is passed it cannot be said that applicant has crossed the maximum period of probation of two years and he is entitled for confirmation. They have also stated that after completion of one year, training period the applicant has already availed three normal chances and three additional chances for passing the Divisional Accountant Grade Examination. The applicant has since failed to pass the Divisional Accountants Grade Examination after availing the maximum number of normal chances

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as well as additional three chances which was a necessary qualification for a person to be appointed as Divisional Accountant. Hence applicant's services were terminated on 21.4.1999.

5. Heard Shri Arun Tandon learned counsel for the applicant and Km .S. Srivastava learned counsel for the respondents and perused the record.

6. As per the terms and references of appointment the applicant was placed on probation for a period of two years ^{or} ~~and if~~ he was found unsuitable during the period of probation, his services were liable to be terminated. The appointment order dated 23.12.94 has stipulated that the applicant will have to pass the Divisional Accountants Grade Examination within the period of probation. The Divisional Accountants on probation found unsuitable due to not passing of departmental examination or due to undisciplined behaviour shall be liable to be terminated.

7. In this case, two years of probation period has expired in 1996. No order extending the period of probation has been issued by the respondents, It is however, not in dispute that the applicant was permitted to avail the maximum chances to pass the Departmental tests but he could not pass these tests even during the period of four years.

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8. During the course of arguments the learned counsel for the ^{nl}respondents drew our attention to Supreme Court Judgement dated 24.11.95 in the case of Satya Narayan Athya Versus High Court of M.P. and another 1996 Supreme Court cases (L & S) 338. In this case the Hon'ble Court has held as under:-

"A reading there-of would clearly indicate that every candidate appointed to the cadre shall undergo training initially for a period of six months before he is appointed on probation for a period of two years. On his completion of two years of probation, it may be open to the High Court either to confirm or extend the probation. At the end of the probation period, if he is not confirmed on being found unfit, it may be extended for a further period not exceeding two years. It is seen that though there is no order of extension, it must be deemed that he was continued on probation for an extended period of two years. On completion of two years, he must not be deemed to be confirmed automatically. There is no order of confirmation. Until the order is passed, he must be deemed to continue on probation."

The Hon'ble Apex court in the case of State of U.P. and others Versus Rajendra Kumar Singh and another (1997) 10 Supreme Court cases 682 held as follows:-


^{nl} "It appears to us that simply by completing

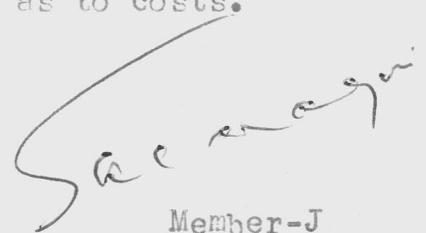
the period of probation an employee cannot claim to be made permanent until and unless his service record is taken into consideration and a positive decision is taken by the appointing authority for making him permanent. In the instant case, it appears that the records of service of the respondent are not good and if on consideration of such adverse records, a decision to terminate the temporary service of the respondent was taken and the order was passed without attaching any stigma, we do not think that such order would be held as illegal and a punishment in disguise."

9. In view of the legal position stated above, the period of probation of the applicant cannot be deemed to have been completed automatically unless there is an order of confirmation. In this case, the applicant has not passed the requisite Departmental tests (even after availing of maximum chances) which is a pre-requisite for being considered for confirmation. Hence no order of confirmation has been issued in this case. After careful consideration of all relevant facts, we do not find sufficient grounds to interfere with the order passed by the respondents terminating the services of the applicant.

10. In view of the above facts the O.A. is devoid of merit and is dismissed accordingly.

11. There shall be no order as to costs.


Member-A


Member-J