

4
7
CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 588 OF 1993

Cuttack, this the 6th day of September, 1999

Shri Akshaya Kumar Choudhury Applicant

Vrs.

Union of India and another Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*

2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? *No*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

Somnath Som
6.9.99

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 588 OF 1993
Cuttack, this the 6th day of September, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Shri Akshaya Kumar Choudhury, aged about 30 years, son
of **Shri R.P.Choudhury, Vill-M.I.M.Dispensary, Park
Street, P.O-Berhampur, District-Ganjam**

.....

Applicant

Advocates for applicant - M/s Ganewar Rath
A.K.Patnaik
S.N.Misra
J.C.Sahoo.

Vrs.

1. Union of India, represented by Secretary to
Ministry of Defence, Indian Ordnance Factories, New
Delhi.

2. General Manager, Indian Ordnance Factories, Ordnance
Factory, Bolangir (P), At-Badmal,
P.O-Gandapatrapalli, District-Bolangir-767 032....

.....

Respondents

Advocate for respondents - Mr.S.B.Jena,
A.C.G.S.C. for R-2.

O R D E R

Mr.U.B.Mohapatra
ACGSC for R-1.

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of
Administrative Tribunal Act, 1985, the petitioner has
prayed for quashing the order of termination dated
20.8.1993 (Annexure-7) and for all service benefits
including arrears of salary from the date of termination
till the date of posting.

S.Jom.

2. The applicant's case is that he was appointed as Supervisor/Technical (Chemical) in the scale of Rs.1400-2300/- on 1.1.1990 by General Manager, Indian Ordnance Factories, in the Ordnance Factory at Bolangir. In the offer of appointment at Annexure-1 it was indicated that the applicant would be on probation for a period of two years and the period is extendable at the discretion of the General Manager. For the period from 1.10.1990 to 30.9.1991 certain adverse entries in his CR were communicated to the applicant in letter dated 28.4.1992 (Annexure-2). The applicant filed a representation but this was rejected in order dated 7.12.1992 at Annexure-3 in which the applicant was advised to take the intimation of shortcomings in correct spirit and show improvement in overall performance. To this letter the applicant has sent a further representation dated 30.12.1992 at Annexure-4. The applicant has stated that he filed a case before the District Consumer Redressal Forum, Bolangir, against the Co-operative Society of Ordnance Factory of which the General Manager was President, in the matter of supply of a gas connection. The District Consumer Redressal Forum directed the opposite party in that case in their order at Annexure-5 to supply LPG connection to the applicant on priority basis. On 15.2.1992 his probation was extended for a further period of one year from 25.6.1992. It is necessary to note that in response to the offer of appointment at Annexure-1 the applicant joined the service on 25.1.1990 and his two years probation would have been over on 25.1.1992. In this letter at Annexure-6 the applicant was directed to show definite improvement in his performance during the extended period of probation failing which further

J Jm

course of action, as deemed proper, would be taken against him. After expiry of this extended period of probation by one year from 25.6.1992, his services were terminated with effect from 20.8.1993 (afternoon) in the impugned order dated 20.8.1993 at Annexure-7. The applicant has stated that even though the order ex facie is termination simplicitor, it is actually a termination by way of punishment and therefore illegal as no opportunity has been afforded to the applicant to show cause against the order at Annexure-7 and no disciplinary proceedings have been followed. It is further stated that the order of termination is also illegal because the extended period of probation was completed on 24.6.1993 and he was not on probation when the order of termination dated 20.8.1993 has been issued against him. On the above grounds, the applicant has come up with the prayers referred to earlier.

3. The respondents in their counter have stated that the applicant joined the post of Supervisor (Chargeman Grade-II, Tech/Chemical) on 25.1.1990. It is stated that shortcomings in the performance of the applicant for the period from 1.10.1990 to 30.9.1991 and from 1.10.1991 to 30.9.1992 were communicated to the applicant. It is also stated that the applicant was chargesheeted under Rule 16 of CCS (CCA) Rules, 1965 on 19.12.1991 for being absent from duty without prior permission and punishments of "Censure" and withholding of increment for one year without cumulative effect, were imposed on him in order dated 11.2.1992. It is further stated that in the assessment during the period of probation from 25.1.1990 to 24.1.1992 it was found that the petitioner was irregular and he refused to work and therefore initially his probation was extended by

J Jm

18

six months in order dated 27.6.1992. Even during the first extended period of probation his work was not found satisfactory. The DPC again assessed him and recommended extension of probation by one year. The same was extended in orders dated 15.2.1993 and 7.7.1993. After completion of the extended period of probation his case was considered by DPC and the DPC after perusing the assessment report had stated that initially his probation was extended for six months from 24.1.1992 to 24.7.1992. Subsequently his probation period was again extended for a period of one year from 25.7.1992 to 24.7.1993. When his case came up for consideration the DPC noted that the applicant's work is not satisfactory. He has been graded "Below Average" regarding keenness and energy and regularity in attendance. Both the initiating officer and the reviewing officer have recommended for termination of his service. The report for the period from 25.1.1993 to 24.7.1993 had also recommended his termination from service. In view of the above, the DPC recommended that the applicant's services should be terminated. The recommendation of the DPC was accepted by the General Manager and the services of the petitioner were terminated on 20.8.1993 as per the impugned order. The respondents have stated that the petitioner was afforded ample opportunity for improving his performance during the probation period, but there was no improvement. Moreover, it has been stated that the impugned order has been passed in pursuance of the recommendation of the D.P.C. It is further stated that the impugned order of termination is an order of termination simpliciter and no stigma is attached to the applicant and therefore the appointing authority is within his rights to terminate the services of the probationer. On the above grounds the respondents have

J. Jam

9 12
opposed the prayer of the applicants.

4. We have heard Shri Ganeswar Rath the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing for respondent no.1 and Shri S.B.Jena, the learned Additional Standing Counsel for respondent no.2 and have also perused the records.

5. It has been submitted by the learned counsel for the petitioner that as the extended period of probation of the petitioner ended on 24.7.1993 the petitioner should be deemed to have been confirmed after 24.7.1993 and therefore his services as a probationer could not have been terminated after 24.7.1993 in order dated 20.8.1993. It has been further urged that even though the impugned order *ex facie* is an order of termination *simpliciter*, in effect it is a termination by way of punishment and therefore *prima facie* illegal because no showcause notice has been issued to him nor has any disciplinary proceeding been undertaken against him. In support of his contention, the learned counsel for the petitioner has relied on the case of Om Prakash Maurya v. U.P.Co-operative Sugar Factories Federation, AIR 1986 SC 1844. In that case the relevant regulation provided for probation initially for a period of one year to be extendable in the maximum by another one year. The relevant regulation stipulated confirmation of an employee by an express order on the completion of the probationary period. The regulation did not expressly lay down as to what would be the status of an employee on expiry of the maximum period of probation where no order of confirmation is issued and the employee is allowed to continue in service. Their Lordships of the Hon'ble Supreme Court have held in that case that since

J. S. M.

regulation did not permit continuation of an employee on probation for a period of more than two years the necessary result would follow that after expiry of two years probationary period, the employee will stand confirmed by implication. In the instant case in the order of appointment it has been mentioned that the applicant will be on probation for two years and this period of probation would be extendable under orders of General Manager. There is no provision that there is a maximum period of probation on expiry of which the applicant would be deemed to have been confirmed. The learned counsel for the petitioner has also not shown any rule under which there is a maximum period of probation. Moreover, in the case of Dhanjibhai Ramjibhai v. State of Gujarat, AIR 1985 SC 603, the Hon'ble Supreme Court have held that there is no right in the probationer to be confirmed merely because he has completed the period of probation of two years and passed the requisite test. The function of confirmation implies exercise of judgment by the confirming authority on the overall suitability of the applicant for permanent absorption in service. The learned counsel for the petitioner has relied on the decision of a Division Bench of the Hon'ble High Court of Orissa in the case of Bhabani Prasad Dash v. Arbitrator-cum-Director of Textiles, 76(1993) CLT 449. There the Hon'ble High Court of Orissa have held that if an incumant is appointed on probation and the maximum period of probation expires during which period the employer neither discharges nor confirms such employee, then in the absence of any statutory indication it can be held that there was

implied confirmation. In a later Full Bench decision of the Hon'ble High Court of Orissa in the case of Amiya Charan Jena v. Managing Director, Orissa State Handloom Development Corporation Ltd., 1997 (1) OLR 506, their Lordships have held that there cannot be any deemed confirmation and there has to be an order of confirmation in writing after expiry of maximum period of probation. In Dhanjibhai Ramjibhai's case (supra), the Hon'ble Supreme Court have also held that there is no distinction 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. Such candidate after completion of the period of two years can be allowed to continue beyond the period of two years in order to allow the confirming authority to arrive at a definite opinion. A person does not enjoy any greater right to confirmation if he is allowed to continue beyond the initial period of probation. In the instant case his extended period of probation was over on 24.7.1993. His case was thereafter taken up by DPC and on the recommendation of the DPC his services were terminated in order dated 20.8.1993 within a period of less than one month from the date of expiry of the last extended period of probation. There was also no limit of maximum period of probation in the case of the applicant nor was there any order of confirmation. Therefore, it cannot be said that the applicant had been confirmed either expressly or by necessary implication. The respondents have pointed out that during the period of probation including the extended period, the performance of the applicant has come for adverse notice. The adverse entries have been communicated to

him and his representation for expunging the adverse entries has been rejected. He has also been proceeded against in departmental proceeding and a punishment was imposed. In view of this, it cannot be said that the applicant is deemed to have been confirmed after 24.7.1993 and after that date the order of termination could not have been passed. This contention is therefore held to be without any merit and is rejected.

6. The second contention of the learned counsel for the petitioner is that the order of termination is by way of punishment. On the face of it by reading the order at Annexure-7 it is clear that by this order no stigma has been attached to the applicant which might affect chances of his future employment elsewhere. It cannot therefore be said that the impugned order is by way of punishment. The learned counsel for the petitioner has urged that in the counter filed by the respondents it has been stated that the applicant's services have been terminated because of his unsatisfactory work and therefore the impugned order has been issued by way of punishment. This contention is without any merit because after the termination order has been issued, in course of the present litigation the respondents have pointed out that the work of the applicant was found unsatisfactory during his period of probation and extended period of probation. That would not mean that the order itself is by way of punishment. Obviously, when the service of a probationer is terminated, it would be on the ground of unsatisfactory work during the period of probation unless it is because of shrinkage of the establishment. If the contention of the learned counsel for the petitioner is accepted, then every case of termination of service of probationer

g. Jam.

because of unsatisfactory work during the period of probation will have to be taken as an order by way of punishment. In such cases one has to go primarily by the terms of the order. In the instant case the impugned order has been issued in terms of appointment of the applicant and there is nothing illegal in this.

7. In the result, we hold that the Application is without any merit and the same is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN

AN/PS

Somnath Som
6.9.99