

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 332 OF 1996.

Cuttack this the 17th day of March, 1998.

SHRI JYOTI PRASAD PATRA.

....

APPLICANT.

-Versus.-

DIRECTOR, NATIONAL SUGAR INSTITUTE
MINISTRY OF FOOD (DEPARTMENT OF FOOD)
GOVERNMENT OF INDIA, KANPUR-208017. ...

RESPONDENT.

(FOR INSTRUCTION)

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*

Somnath Som
(SOMNATH, SOM)
VICE-CHAIRMAN

S. K. Agarwal
(S. K. AGARWAL)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO. 332 OF 1996.

Cuttack this the 17th day of March, 1998.

CORAM:-

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
AND

THE HONOURABLE MR. S.K. AGARWAL, MEMBER (JUDICIAL)

...

Shri Jyoti Prasad Patra, son of
Shri Chakradhar Patra, resident
of 81, Kharavela Nagar, Unit-3,
Bhubaneswar, Orissa last employed
in National Sugar Institute,
Ministry of Food (Department of
Food), Government of India, Kanpur,
PIN-208017 (UTTAR PRADESH).

... APPLICANT.

By legal practitioner :- In person.

-Versus-

DIRECTOR,
National Sugar Institute,
Ministry of Food,
(Department of Food),
Government of India,
Kanpur, Uttar Pradesh.

... RESPONDENT.

By legal practitioner :- Mr. Ashok Mohanty, Senior Standing
Counsel (Central).

.....

O R D E R

MR. S.K. AGARWAL, MEMBER (JUDICIAL) :-

This is an application, under section 19 of
the Administrative Tribunals Act, 1985 with the prayer that
the probation period of the applicant from 18.4.1991 upto
17.4.1993 in the post of Junior Engineer (Electrical) in
the National Sugar Institute, Kanpur should be treated

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as Satisfactory/successful and the extension of probation being illegal should be quashed.

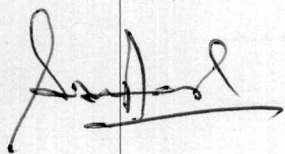
2. In brief, the facts of this case, as stated by the applicant, are that the applicant was appointed in the post of Junior Engineer (Electrical), which is a Group B, Non-Gazetted Civil Post belonging to the General Central Service at National Sugar Institute, Kanpur vide order No. A-19013/21/90-Estt. dated 30.4.1991, on 18th of April, 1991 (Annexure-A/5). It is stated that the applicant was appointed after being successful in the examination conducted by the Union Public Service Commission through All India competitive Examination and the Appointing Authority prescribed a probation period of two years from the date of appointment to the post of Junior Engineer (Electrical) i.e. from 18.4.1991 to 17.4.1993. It is also stated that during the period of his incumbency, he had not committed any act subversive of office discipline or gross violation of any Government Rules. It is also submitted that he had not neglected his official work or had shown inefficiency/insincerity in work. He had also not acted in any manner unbecoming of a Government servant. It is stated that during that period of service at National Sugar Institute, Kanpur, the applicant was successful in another All India Competition for selection to a Group 'A' Gazetted Post belonging to Defence Aeronautical Quality Assurance Service conducted by the

[Signature]

U.P.S.C. and has successfully passed the Hindi Examinations (Praveen & Pragya), conducted by the Ministry of Home Affairs (Department of Official Language). It is submitted that the Appointing Authority vide its order dated 14.10.1993 extended the probation period of the applicant for one year when the applicant was on leave and the probation extension order was not communicated to the applicant, in time inspite of his repeated request and kept the applicant under darkness. He further submitted that , he received the extension order only in January, 1995 from the then Director, National Sugar Institute, Kanpur, at Krishi Bhavan, New Delhi. The applicant preferred an appeal against the said order but the Appellate Authority, has not yet communicated his order to the applicant. Therefore, this application before the Tribunal with the aforesaid prayer.

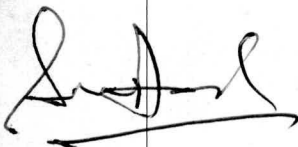
3. Counter was filed by the Respondents. It is admitted by the Respondents that the respondents have issued the order dated 14.10.1993 extending the probation period of the applicant for one year but it is stated that the applicant ought to have preferred this Original Application within a period of six months from the date of receipt of the said order. As such, this Original application is barred by section 21 of the Administrative Tribunals, Act, 1985. It is also stated that the applicant was, while on probation, on 20.1.1993, served with a Memo containing

adverse remarks for the period from 18.4.91 to 31.3.92 in respect of work and conduct of the applicant but the applicant refused to accept it. Therefore, a recordable warning was issued on 1.2.1993 to the applicant. It is further stated that prior to this Memo, he was also served with a Memo bearing No.19012/21/90-Estt. dated 11.6.1992 wherein, he was asked to sign the attendance register regularly as he was in habit of showing disrespect deliberately to his superiors. Therefore, he was also asked to conduct himself decently while on duty. It is also stated in the counter that the applicant was also served with a Memo No. A-19013/21/90-Estt. dated 14.10.1992 to sign in the attendance register in proof of his presence but he did not pay any attention to the Memo. Thus, it is false to say that the conduct and behaviour of the applicant was excellent/satisfactory. It is further submitted that appraisal of the conduct and work of the applicant during the probation period was found to be unsatisfactory on a review of work and conduct made by the D.P.C. Therefore, the probation period was extended for one year which will be evident from Annexure-1 to the application. It is further submitted that the applicant did not prefer any appeal in time against the said order and the applicant preferred an appeal directly to the Secretary and the Secretary in turn, marked the same to



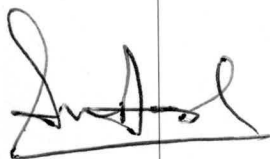
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the Director, who was his appointing authority. It is also stated that there is no provision of any appeal against the extension of the probation period by the Appointing Authority. Departmental Promotion Committee has considered the case of the applicant on the basis of two years assessment report of the officer and after having gone through the assessment report, the committee did not find it fit for completion of the probationary period. Therefore, the probation period of the applicant was extended. It is further submitted that the applicant is in habit of filing frivolous representation to the various authorities and which is evident from his letter dated 17.1.1995 wherein the petitioner requested to allow him to withdraw all the applications made by him and had expressed regret for such type of representations. It is also submitted that on being recommended by the UPSC, for appointment in defence Aeronautical Quality Assurance Service, the applicant gave an undertaking to resign from the post on 11.11.1993 and accordingly, he was asked to submit a formal resignation letter (Annexure-F). Thereafter, the applicant submitted his resignation and the resignation of the applicant on being accepted, he joined in Defence Aeronautical Quality Assurance Service Under the Director of Technical Development and Production Supply and ceased to be an employee of the National Sugar Institute, Kanpur.



In this way, the Respondents have requested that this O.A. is to be dismissed.

4. The applicant has filed a detailed rejoinder. In his rejoinder, he has denied all the submissions made by the Respondents in the counter affidavit against him and stated that against the Memo, he filed a representation to Joint Secretary, Sugar (Ministry of Food) New Delhi which is pending disposal till date. He has made it clear that he has performed all his duties assigned to him by his superior authorities during the probation period as a disciplined officer of the institute, and his Appointing Authority had issued the experience certificate which is at Annexure-A/5, of the rejoinder. It is further averred that the Respondents have no material proof substantiating his disobedience to their assigned works and instructions and the only material proofs the authorities have brought are adverse entry memo dated 20.1.1993 served in January, 1995 and warning dated 1.2.93 which was not at all served and Memo dated 14.10.1992 served on the applicant on 4.11.1992 which according to the judgment of the Central Administrative Tribunal, Calcutta Bench was against the principles of natural justice. It is also stated by the applicant in the rejoinder that adverse remarks against which representations are pending for disposal, can not be relied upon and it has been further stated that the adverse remarks which are based



on irrelevant materials and not based on objective assessment, are to be ignored. He has also preferred representation against the adverse entry memo and also preferred representation against memo dated 16.6.92 and 14.10.1992. He has also challenged the report of the Departmental Promotion Committee headed by his Appointing Authority extending his period of probation basing on the assessment report. With the rejoinder, the applicant has filed documents marked as Annexures-A1 to Annexures-A/13.

5. We have heard the applicant in person and Mr. Ashok Mohanty, learned Senior Standing Counsel (Central) appearing on behalf of the Respondents and perused the whole records.

6. On the perusal of the records pertaining to this case, it appears that (1) the applicant was served with a Memo dated 20.1.1993 containing the adverse remarks for the period from 18.4.1991 to 31.3.1992 in respect of his work and conduct; (2) a recordable warning was issued to the applicant vide letter dated 1.2.1993; (3) the applicant was served with a Memo No. 19012/21/90-Estt. dated 11.6.1992 wherein he was asked to sign the attendance register regularly and he was asked to behave himself decently while in duty; (4) The applicant was served with a Memo dated 14.10.1992 to sign the attendance register; (5) the applicant is in habit of filing false and frivolous

representation to various authorities and by his letter dated 17.1.1995, he has withdrawn all his applications/representations expressing regret.


7. The applicant, according to his service conditions, was on probation for a period of two years and after this period, the appointing authority has to see whether he should be confirmed taking into consideration his overall performance during the probation period, or the period of probation is required to be extended or he should be discharged from service. The case of the applicant was placed before the D.P.C. and after considering the case of the applicant on the basis of the assessment report, the DPC did not find the applicant fit for confirmation. Therefore, the DPC recommended for extension of the period of probation of the applicant for another one year. The report of the DPC was submitted before us and we have perused the same. The DPC after assessing the report of the applicant observed as follows:-

* xx xx xx.

Considered by circulation of papers the suitability of Shri J.P.Patra, holding the post of Junior

Engineer (Elec.) Group 'B' Non-Gazetted) at National Sugar Institute, Kanpur in the Pay Scale of Rs. 2000-3500/- for completion of his probationary period. The Officer has completed two years service in the capacity of Junior Engg. (Elec.) at the Institute on 17.4.93. The committee examined the two years' Assessment Reports of the Officer. After having gone through the assessment reports of the Officer, the Committee did not find him fit for successful completion of the probation period. The Committee, therefore, recommends that the probation period of Shri J.P. Patra, Junior Engineer (Elec.) be extended for a period of one year w.e.f. 18.4.93. The Vigilance Officer has furnished the vigilance clearance certificate in respect of the officer and the integrity certificate of the officer has been signed by the Director and found in order*.

Therefore, on the basis of the report of the Departmental Promotion Committee, the period of probation was extended for one year by orders dated 14.10.1993. The applicant has vehemently argued before us that the Appointing Authority has passed an order to extend the period of probation without any basis and therefore, he prayed that the period of probation of the applicant should be declared as satisfactory and the order extending the period of probation dated 14.10.1993 should be quashed.

 8. It would be proper if we try to find out as to what is the status of a probationer in the Service before we consider the arguments of the applicant if it was punitive in nature. For the purpose, we will go through the law laid down on the point in the case of PARSHOTAM LAL

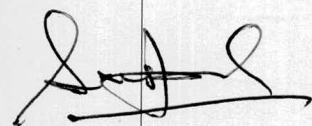
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DHINGRA VRS. UNION OF INDIA REPORTED IN AIR 1958 SC 36

which is regarded as Magna Carta of the Indian Civil Services by the Hon'ble Supreme Court itself in the case of STATE OF U.P. VRS. RAMCHANDRA TRIVEDI REPORTED (1976) 4 SCC 52, AIR 1976 SC 2547. In the case of Parshotam Lal Dhingra (supra), Their Lordships have been pleased to observe as follows:-

"An appointment to a permanent post in Government service on probation means as in the case of a person appointed by a private employer that the servant so appointed is taken on trial. The period of probation may in some cases be for a fixed period e.g., for six months or for one year or it may be expressed simply as 'on probation' without any specification of any period. Such an employment on probation under the ordinary law of master and servant comes to an end if during or at the end of the probation the servant so appointed on trial is found unsuitable and his service is terminated by a notice".

The view in Dhingra Case, so far as the status of a probationer is concerned, again came for consideration before the Hon'ble Supreme Court in the case of OIL AND NATURAL GAS COMPANY VRS. DR. MD. S. ISKANDER ALI reported in AIR 1980 SC 1242 in which it was held that a probationer had no right to the service. Further at paragraph-7 of the judgment, Their Lordship's have been pleased to observe as follows:-



-11-

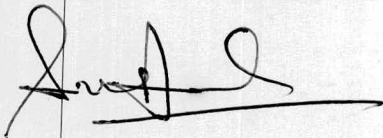
"It is obvious that a temporary employee is appointed on probation for a particular period only in order to test whether his conduct is good and satisfactory so that he may be retained. The remarks in the assessment roll merely indicate the nature of the performance put in by the officer for the limited purpose of determining whether or not his probation should be extended. These remarks were not intended to cast any stigma".

In the case of SHAMERSINGH VRS. STATE OF PUNJAB reported in AIR 1974 SC 2192, it was held by the Hon'ble Supreme Court that before the probationer was confirmed, the authority concerned was under obligation to consider whether the work of the probationer was satisfactory or whether he was suitable for the post.

9. In view of the above legal position, it is clear that a probationer has no right to the post or service. To keep a person on probation means that the employer should judge the performance and to take decision about the suitability of the probationer. In this way, if the probationer is found unsuitable, his probation period can be extended or he can be discharged from service.

10. With regard to uncommunicated adverse remarks or nonsupply of the Memo in time, we are of the considered opinion that since in view of the above law a probationer has no right to hold the post on which he has been appointed

on probation, he can not claim a right to be heard. The obligation to communicate the adverse materials to a person before taking action against him on the basis of the said material is a facet of the principles of natural justice. But principles of natural justice have no application in the case of a probationer during the period of probation since he has no right to hold the post. It is therefore, not possible to hold that there is an obligation to communicate the adverse material to a probationer before a decision is taken on the basis of the said material that he is not fit for confirmation. Our view gained support in view of the decision of the Hon'ble Supreme Court in the case of HIGH COURT OF JUDICATURE AT PATNA VRS. PANDEY MADAN MOHAN PRASAD SINHA AND OTHERS REPORTED IN 1997 Supreme Court Cases (L&S) 1703(II); and 1997 10 SCC 409. Their Lordships of the Hon'ble Supreme Court have been pleased to observe as follows:-



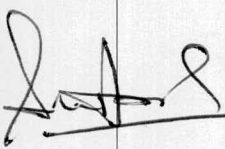
"There is no obligation to communicate the adverse remarks to the petitioner before taking decision to terminate his services on the basis of the adverse material. But uncommunicated adverse material can be taken into consideration for assessment of suitability of the probationer and forming decision to terminate his services. Such consideration shows non-arbitrariness of the decision. Consideration of complaints regarding integrity, character and morality of the probationer and his alleged indulgence in drinking and gambling in taking decision to terminate his services does not show that the decision is punitive."

-13-

11. Right of appeal against the order of probation has not been provided under the rules. Applicant could not produce any such rule on the basis of which it can be said that appeal against such order lies and to whom. Therefore, if no decision on the appeal has been communicated to the applicant so far, it does not make any difference.

12. The applicant has already resigned from the post and his resignation has also been accepted by the Appointing Authority and he has been relieved from the said post and joined the another post.

13. Therefore, the impugned order for extending the period of probation by the Respondents, in our considered view, does not seem to be illegal. Since the applicant had already resigned from the post to join another post, and his resignation has been duly accepted by the Appointing Authority and he has been relieved from the Post, he is not entitled to continue in the post in question.

 14. On the basis of the above all facts and law, we are of the considered opinion that the applicant fails to make out a case entitling him to get any relief prayed for. As such, the Original application is dismissed

leaving the parties to bear their own costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN 17/3/98

S. K. Agarwal
(S. K. AGARWAL) 17/3/98
MEMBER (JUDICIAL)