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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH;CUTTACK

ORIGINAL APPLICATION NO.525 OF 2000
Cuttack this the 20th day of April 2005

S.C.Sethi

...

Applicant(s)

- VERSUS -

Union of India & Ors. ...

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? *no*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *no*

20/04/05
(M.R. MOHANTY)
MEMBER (JUDICIAL)

[Signature]
(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 525 OF 2000
Cuttack this the 30th day of April 2005

CORAM:

HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)

...
Sudam Charan Sethi, aged about 42 years,
Son of late Dhanmat Sethi of Kandhpali,
At/PO/PS/Dist-Bolangir

... Applicant

By the Advocates

M/s. B. Pujari
R. Mohanty

- VERSUS -

1. Union of India represented by the Secretary to the Government, Department of Defence Production, Ministry of Defence, New Delhi-110001
2. Director General, Ordnance Factory Board, 6, Explanade East, Calcutta-700 069
3. General Manager, Ordnance Factory, Badmal-7677770 Dist-Bolangir

... Respondents

By the Advocates

Mr. B. Dash, A.S.C.

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Shri Sudam Charan Sethi

has filed this Original Application being aggrieved by the order Nos. 475 and 1505/SCS/99/(Vig)/OFBL dated 28.5.1999 and 11.1.2000 vide Annexures-2 and 3 respectively. His grievance is that vide order under Annexure-2 the applicant's service has been terminated and vide Annexure-3, his appeal dated 3.8.1999 filed against the said termination order has been rejected.

2. The facts of this case are that the applicant was appointed on 6.2.1995 as Fireman-II in the Ordnance Factory, Badmal. He was not provided with any quarters

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and therefore, he had to commute from his residence at Balangir to the factory at Badmal, which was at a considerable distance. At times, he had to take leave due to lack of conveyance or on account of domestic requirements. In terms of his appointment, he was required to be in probation for a period of two years and that period was extendable at the discretion of the General Manager of the Ordnance Factory. However, the applicant had never received any letter/order from the General Manager or any other authority regarding his confirmation on the job and/or extension of his probation period. He was given verbal assurance to the effect that if no order was passed, his services would be deemed to have been confirmed. While he was hoping to be confirmed, vide order dated 28.5.1999 (Annexure-2), the General Manager terminated his service with effect from 27.5.1999. Being aggrieved, he had preferred an appeal before the appellate authority, but he did not get any relief from that authority. He had also asked for a copy of Service Book which he could get only on 20.4.2000, for which he had to approach the Defence Minister with his grievance that the Respondents had denied him access to the Service Book. It is after perusal of the Service Book, he came to know that his probation period had been extended; which was never intimated to him either orally or in writing nor was there any such reference in his Service Book. Further, that it was only in 1999, there was an entry made in his Service Book to the effect that the period of probation had been extended with effect

from 24.3.1997 and thereafter on 3.6.1999, another entry made in the Service Book that his probation period was extended for six months with effect from 1.1.1999.

2. Respondent No.3, viz., General Manager, Ordnance Factory, Badmal, by filing a reply in counter has opposed the prayer of the applicant. It is his contention that the applicant had admitted that he used to frequently remain absent from duty on personal grounds. It has been further submitted that the applicant had never been confirmed in service. With regard to extension of probation period, it has been submitted that every time the period of probation was extended, these orders were notified/ issued through the Factory Order (in short F.O.). As per the established norms of the Ordnance Factory, all important orders are circulated through FOs.

3. In reply to the rejoinder, it has been submitted by Res. No.3 that during the period of probation applicant's performance was not found satisfactory, as a result of which in terms of the conditions of appointment, his probation period was extended three times with effect from 26.3.1997 to 31.12.1997, 1.1.1998 to 31.12.1998 and from 1.1.1999 to 30.6.1999. He has also submitted that the applicant on most of the times used to be on extraordinary leave, which showed that he avoided duty without authority. For his irregular habits the applicant was also proceeded against twice during

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the period of probation. He was, by order dated 11.8.1997 of the General Manager, warned that he should be more careful in his conduct and any future lapse/breach on his part would be viewed seriously making him liable to severe disciplinary action. Thereafter, by another order dated 23.5.1998, the General Manager imposed on him the penalty of withholding increment of pay for a period of two years on account of his unauthorised absence from duties/for irregular attendance and being a habitual offender. But inspite of these disciplinary actions taken against him, the applicant did not show any improvement and as no Govt. servant could be retained in service for more than double the period of probation, his service was terminated under Rule-5(1)(b) of CCS(TS) Rules, 1965.

4. We have heard the learned counsel of both the sides and have perused the records placed before us.

5. The applicant has challenged the order (as indicated above) of the Respondents terminating his service on the ground that the said order was mala fide, unreasonable, unfair and illegal. To substantiate his stand, the applicant has submitted that the alleged orders extending the probation period were never served on him and the manner in which the authorities dealt with him and his representations would make it clear that all along the authorities had acted with malicious intent. He has also taken the plea that initiation of disciplinary proceedings against him under the provisions of CCS(TS) Rules, 1965 and making him a subscriber to

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the General Provident Fund would make it clear that the applicant had been treated as a confirmed employee; and, lastly, it has been urged by the applicant that from the perusal of the Service Book it would be clear that the authorities had manipulated the entries.

6. We have carefully considered the pleas made by the applicant both in his O.A. as well as during oral argument. Basically two issues have been raised by the applicant. Firstly, that his termination was illegal. Secondly, that he was deemed to have been confirmed ~~employee~~, as he was made member of the General Provident Fund and as he was brought under the jurisdiction of CCS(CCA) Rules.

7. With regard to the termination of service, it is not disputed that in his letter of appointment dated 25.2.1995 (Annexure-A) the conditions of service inter alia included that on appointment, he would be on probation for a period of two years and that period was extendable at the discretion of the General Manager, and also that his service could be terminated at any time during the probation period without notice and without assigning any reason. It also reveals from the facts of the case that the applicant used to be on leave very often, for which two disciplinary proceedings were initiated against him during the years 1977 and 1998, vide Annexures-R/5 and R/6, respectively. It is the contention of the Respondents that he was not attentive to his work and he was not amenable to

discipline. On the other hand, the applicant has alleged mala fide against the Respondents and in support of the allegation, he has drawn our notice to the fact that he had never received any formal letter from the Respondents/General Manager to the effect that his probation period had been extended.

8. In answering the first issue raised by the applicant, we would like to quote here at the outset, the following observations of their Lordships in the case of Sukhbans Singh vs. State of Punjab (reported in A. I. R. 1962 S. C. 1711) that "probation" means - 'testing of a person's production capacity, conduct or character, especially before the is admitted to regular appointment'. According to Webster Dictionary, the word 'probation' is said to have been derived from the Latin word "probatio" and French word 'Prebre', meaning to "try, examine, proof" and is defined "as any proceeding designed to ascertain truth to determine character, qualification etc., examination, trial or a period of trial as to engage a person on production". It has, therefore, been the settled law that a probationer cannot automatically acquire the status of a permanent member of service unless, of course, the rules under which he is appointed expressly provide for such a result.

9. In the instant case, as the letter of appointment stipulates that the probation period ^{was} initially

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for a period of two years and extendable further and that the service of the employee ^{could} ~~can~~ be terminated at any time during the probation period, the plea of the applicant that extension/termination of probation was illegal does not have any legal basis to stand judicial scrutiny.

With regard to the second issue raised by him, the answer is available in the decision in the case of Express Newspaper Ltd. vs. Presiding Officer, Labour Court, Madras (reported in AIR 1964 SC 806) wherein it has been held by the Hon'ble Supreme Court that a person appointed on probation would not ordinarily get automatic confirmation in service on the expiry of the stipulated period and ~~that~~ if he is allowed to continue in service without any action being taken by the employer either by way of confirmation or by way of termination, he has no scope to make the claim as he has ~~made~~ in this O.A. Further, the Apex Court in the case of T.C.M. Pillai vs. Indian Institute of Technology, Madras (AIR 1971 SC 1811) held as under :

"It is well settled that a probationer or a temporary servant can be tested. If it is found that he is not suitable for the post, his services can be terminated. This can be done without complying with the provisions of Article 311(ii) of the Constitution of India, unless the services are terminated by way of punishment".

10. The applicant also cannot have any indefeasible right to challenge the order of termination (Annexure-2) in view of the decision rendered by ~~the Hon'ble Supreme Court~~ of the Hon'ble Supreme Court in the case of Hari Singh vs. State of Punjab (reported in AIR 1974 SC 2263) wherein it has been held that termination on

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account of inadequacy for the job or for any deficiency or other defect not involving moral turpitude is not a claim which can be called discharged by punishment. In the instant case, the Respondents have repeatedly brought to our notice that it was one of the rare cases where during the period of probation, an employee was to be proceeded twice on the same ground, i.e., absence without leave or frequent absence etc. and that he refused to improve his habits/conduct inspite of reasonable opportunity given to him in that regard. It is, therefore, difficult to uphold the plea of the applicant that his ouster was the result of any malice on the part of the Respondents against him. The Hon'ble Apex Court, in Hanshuman case (supra) have held that fitness for the job is one of the most important reasons for confirmation. We are also not impressed by the argument canvassed before us by the learned counsel for the applicant that, because he was made a member of the General Provident Fund or because CCS(CCA) Rules were applied on him that itself made him a deemed confirmed Govt. servant, as we have already pointed out, the law of the land does not permit any confirmation on deemed basis and as their Lordships have held not only in the case of Express Newspaper Ltd. (supra) but also in the case of Municipal Corporation, Raipur vs. Ashok Kr. Mishra (AIR 1991 SC 1402) that there is no concept of deemed confirmation in law and therefore, express order of confirmation is necessary. Admittedly, it is not the case of the applicant that he had been given any letter of confirmation ever.

8/ 11. From the above discussion, it is clear that neither the termination order can be held bad in law nor the claim of the applicant with regard to confirmation is sustainable in the eye of law. With regard to the technical objection raised by him that he having not actually been served with the order of extension of probation period, his probation period could not have been treated as extended has no force in law, because, as disclosed by the Respondents, the official orders regarding personal matters in the defence services including the Ordnance Factory are issued through Factory Orders (FO). That being the standing system of communication in the Respondents-organisation, the applicant cannot take any exception to that now. The fact of the matter was that he was not regularly attending office and therefore, he was unaware of the FOs issued in his absence. Be that as it may, the Respondents have disclosed that his services had to be terminated because, no employee can be retained in service more than double the period of probation and therefore, his services were terminated being found unsatisfactory.

12. In the conspectus of the facts and law as enumerated above, the applicant has not been able to make out a case for any of the reliefs prayed for by him. In the result, the O.A. being devoid of merit is dismissed.

No costs.

20/04/05
(M.R. MOHANTY)
MEMBER (JUDICIAL)

BJY

[Signature]
(B.N. SOM)
VICE-CHAIRMAN