

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 483 OF 2007

Order Reserved on 14.7.2014

Order Pronounced on 04/08/2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Sanjay Chaudhari aged about 31 years, son of late Rameshwar Chaudhari, resident of Avadh Vihar Colony, Mananagar, District Lucknow, presently posted on the post of Driver (Technical) Grade III, in Tele Communication Division Director of Telecommunication Division, Directorate of Tele Communication Research Design and Standard Organization, Lucknow.

Applicant

By Advocate Sri L. K. Pathak

Versus

1. The Union of India through the General Manager, Railway Board, Rail Bhawan, New Delhi.
2. The Director General, Research Design and Standard Organization Lucknow 226001.
3. The Director, Telecommunication Directorate, Research Design & Standard Organization, Lucknow.
4. Assistant Design Engineer, Telecommunication, Maintenance Section Research Design & Standard Organization, Lucknow.
5. Sri Bheem Sen, Assistant Design Engineer, Research Design & Standard Organization Lucknow.

By Advocate Sri S. Verma.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

(a) Issue an order or direction setting aside the impugned order dated 7.11.2007 passed by the opposite party NO 3, reverting the petitioner from the post of Driver (Technical) Grade- III in the pay scale of Rs. 3050-4590 to he post of Peon in the pay scale of Rs. 2550- 3200 (as contained in Annexure NO. 1 to this original application.

(b) Issue an order or suitable direction directing the opposite party No. 3 to 5 to allow the petitioner for discharge of his duty as driver (Technical) Grade III in the pay scale of Rs. 3050-4590 till the completion of inquiry,

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initiated against the petitioner by charge memo dated 23.10.2007 which is under process.

(c) To issue such other order or suitable direction which this Hon'ble Tribunals deems just and proper under the circumstances of the case."

2. The present O.A. is preferred by the applicant under Section 19 of the AT Act whereby the applicant was appointed as Peon on compassionate ground in 2004. He was confirmed in 2006. In 2006, itself, the opposite parties advertised the post of driver. Since the applicant was eligible, therefore, he applied and was called for interview and was declared successful. Subsequently, he was appointed as Driver (Technical) Grade III. In 2007, the applicant was assigned the election duty and he was released along with vehicle on 28.3.2007. Subsequently, the applicant was served with a charge sheet through which, it is indicted that due to carelessness of the applicant, the government vehicle got damage and a sum of Rs. 24,238/- is spending for its maintenance and repairs. The applicant submitted the representation to the said charge sheet on 12.7.2007. Subsequently, the applicant was placed under suspension vide order dated 21.9.2007 and finally punishment was awarded upon the applicant through which punishment of with holding of one increment without cumulative effect was issued. The applicant was given time to submit the appeal, on account of some mistake, a corrigendum was issued on 12.10.2007. The learned counsel for the applicant has pointed out that the respondents passed an order on 7.11.2007 whereby, the applicant was reverted from the post of Driver to the post of Peon in the pay scale of Rs. 2550- 3200/-. Feeling aggrieved by inaction of the respondents, the applicant preferred the present O.A.

3. The learned counsel for the respondents have filed their reply and through reply, it is indicated by the respondents that

the applicant was initially appointed as Peon in the pay scale of Rs. 3050-4590 w.e.f. 1.9.2004 on compassionate appointment after his father's death and subsequently, he was absorbed/confirmed w.e.f. 1.9.2009. The applicant appearing in the departmental selection held on 23.10.2006 for the post of Technician Grade III(Driver) and after being selecting/promoted in that post on probation for one year along with other prescribed terms and conditions vide order dated 14.12.2006. The learned counsel for the respondents relied upon para 2 of the aforesaid promotion order which is for a period of one year and he will remain on probation for the aforesaid period of one year which can be extended and during his probation period, his conduct is not being found satisfactory, he can be reverted back during probation from higher post. During the said period, it was observed that the applicant's work as a Driver was not treated as safe vehicle driver and it was dangerous to travel on the motor vehicle driven by him. He also mishandled the motor vehicle which resulted in major breakdown and substantial expenses for its maintenance and repair was paid. Not only this, it is alleged by the respondents that the applicant's behavior towards his supervisors and officers was also not satisfactory. Consequently, his work and conduct during his period of probation as Technician Grade III(Driver) was not satisfactory and the applicant was reverted from Technician Grade III (Driver) to the post of Peon. Not only this, it is also argued by the respondents that the competent authority to judge the applicant fitness for work and suitability during the probation period and after judging the same, the impugned order was passed. As such, there is no illegality in impugned order and no interference by this Tribunal is called for. It is argued by the respondents

counsel that the authorities were competent to revert during the probation period if the conduct is not found satisfactory.

4. Apart from the counter reply, the respondents have also filed the preliminary objections against the maintainability of the O.A.

5. On behalf of the applicant, the rejoinder is filed and through rejoinder, mostly the averments made in the counter reply are reiterated. Along with the rejoinder, the applicant has also filed the reply to the preliminary objections.

6. Heard the learned counsel for the parties and perused the pleadings available on record.

7. The applicant was initially appointed as Peon in the pay scale of Rs. 2550-3200 on 01.09.2004 on compassionate grounds after death of his father while in service and later on he was absorbed/confirmed in that post w.e.f. 1.9.2006. Subsequently, he appeared in the departmental selection held on 23.10.2006 for the post of Technician Grade III (Driver) in the pay scale of Rs. 3050-4590 and after being selected, he was promoted on that post on probation for one year with conditions vide order dated 14.12.2006 as contained in Annexure A-5 to the O.A. It was clearly mentioned in para-2 of the appointment order that the probation for a period of one year can be further extended and or in case, the work and conduct being not satisfactory, he can be reverted during probation from higher post to his original post. The competent authority on review of work of applicant, found that he was not a safe vehicle driver. He has been mishandling the motor vehicle resulting in major breakdown which requires substantial expenses for its repair. The applicant's behavior towards his supervisors was also not well satisfactory.

Consequently, the competent authority reverted applicant from

the post of Technician Grade III to the post of Peon w.e.f. 7.11.2007.

8. The other facts which can be seen from the record are that the Vehicle No. UP32 F 2078 was sent for election duty with applicant as Driver w.e.f. 28.7.2007. There was damage caused to the vehicle and it was repaired at a cost of Rs. 24238/-. As such, a minor penalty charge sheet was served upon the applicant and by order dated 28.9.2007, his one increment without cumulative effect was stopped as a minor punishment. The applicant was also suspended vide order dated 21.9.2007 which was revoked vide order dated 23.10.2007. Not only this, the applicant has also served with a major penalty charge sheet dated 15.10.2007/23.10.2007. No material is available on record whether the major penalty charge sheet was proceeded further or dropped after the applicant was reverted to his substantive post of Peon vide order dated 7.11.2007 as impugned in the O.A.

9. The respondents have also pleaded that the applicant's work and conduct during his period of probation was not satisfactory, therefore, the applicant was reverted to the post of Peon. The bare perusal of Para 2 of the promotion order dated 15.12.2006 as contained in Annexure -5 to the O.A. is absolutely clear which reads as under:

“उपरोक्त कर्मचारी अपनी कार्यग्रहण रिपोर्ट अपने नियंत्रक अधिकारी के माध्यम से स्था - 7 को शीघ्र भेजें। वह यह भी नोट करें कि उनको पदोन्नति तिथि से एक वर्ष के लिए परीवीक्षाधीन रखा जायेगा जिसे आगे भी बढ़ाया जा सकता है अथवा परीवीक्षा अवधि के दौरान उनके कार्य एवं आचरण को संतोषजनक न पाये जाने की स्थिति में उन्हें उच्चतर पद से पदस्थ भी किया जा सकता है।”

10. We have carefully considered the matter, it is also seen from the record that no relief has been sought for as regard to the minor punishment of his stoppage of increment or any other punishment by virtue of minor penalty charge sheet, it has

been simply mentioned in the narration of facts that he was proceeded with under the provisions of Railway Servant (Discipline & Appeal) Rules, 1968. The relief sought is that of quashing of the reversion order. The order of reversion of a Railway Servant appointed on probation to his permanent post during year at the end of probation in accordance with terms of his appointment or the rules and orders governing such probation does not amount to penalty. In the case of **Kalpataru Vidya Samasthe (R) and Another Vs. S. B. Gupta and Another** reported in (2005) 7 SCC 524, the Hon'ble Apex Court has been pleased to observe as under:

"7. It is now well-settled principle of law that the appointment made on probation/ad hoc for a specific period of time and such appointment comes to an end by efflux of time and the person holding such post can have no right to continue in the post. In the case of Dir., Institute of Management Development v. Pushpa Srivastava, AIR 1992 SC 2070, a three Judge-Bench of this Court considered the identical question and held in paragraph 20 of the Judgment as under (SCC p. 37):-

"Because the six months' period was coming to an end on 28th February, 1991, she preferred the writ petition a few days before and prayed for mandamus which was granted by the learned Judge under the impugned judgment. The question is whether the directions are valid in law. To our mind, it is clear that where the appointment is contractual and by efflux of time, the appointment comes to an end, the respondent could have no right to continue in the post. Once this conclusion is arrived at, what requires to be examined is, in view of the services of the respondent being continued from time to time on 'ad hoc' basis for more than a year whether she is entitled to regularization? The answer should be in the negative".

8. In the instant case, as noticed above, the respondent has accepted the appointment including the terms and conditions stipulated in Clause 11 of the appointment order and re-joined the post from 4.9.1995 and continued in the post up to 29.2.1996 on which date the period of six months came to an end. He raised grievances before the Tribunal after the probationary period came to an end by efflux of time. Having accepted the terms and conditions stipulated in the appointment order and allowed the period for which he was appointed to have been lapsed by efflux of time, he is not permitted

to turn back and said that the appointment de-hors the Rules or the terms and conditions stipulated in the appointment, were not legally valid."

11. It is well settled that generally a probationer does not acquire any substantive right to the post and cannot complain if his service is terminated at any time during the probationary period i.e. before confirmation. The period during which an appointee has to be on probation is normally provided by the service rules or the order of appointment. A person having accepted the terms and conditions stipulated in the appointment order and allowing the period for which he was appointed to have lapsed by efflux of time is not permitted to turn back and say that the appointment was de-hors the rules or that the terms and conditions stipulated in the appointment were not valid. A probationer cannot automatically acquire the status of a permanent member of the service unless the rules under which he is appointed expressly provide for such a result.

12. As the order itself provides that the higher authority during the probation period, after due consideration the authorities came to the conclusion that the applicant is not fit to be retained on probation period as such, he was reverted back to his substantive post.

13. Therefore, we do not find that this case is fit for grant of any relief to the applicant. It is also be mentioned that the applicant has joined his substantive post of Peon and working in that capacity for the last 6 -7 years, as such, we are of the opinion that the O.A. is liable to be dismissed.

14. Accordingly, the O.A. is dismissed. No order as to costs.

J. Chandra

(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)