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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

O.A. 40 of 1991

V. Venkatesh

Applicant.

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon. Mr. A.B. Gorthi, Adm. Member.

(Hon. Mr. Justice, U.C.S, V.C.)

The applicant who was promoted as Superintendent after recommendation by the Departmental Promotion Committee on a pay scale of Rs 550-900 (new 1640-2900) on 24th September, 1987 has challenged the reversion order dated 9.1.91 reverting him to the post of Assistant in the scale of Rs 1400-2300 in the office of Central Institute of Horticulture for Northern Plains at Lucknow. He entered the service as Junior Clerk at Bangalore on 29.1.1969 and was first promoted to the post of Senior Clerk and then to the post of Assistant in the year 1981 and was transferred to Lucknow. It was on 3.10.87 he was given the order placing him on a probation of two years. On 25.10.89 he was served a memo communicating adverse remarks for the period 1.1.88 to 31.3.89 against which he made a representation on 20.11.89 which according to him is still pending. On 18.9.90 an order was issued extending the period of probation for 1 year more viz. upto 23.9.90.

The applicant has challenged the reversion order on the ground that it is by way of punishment and that no notice or opportunity regarding his work was given and that after 3 years he could not have been reverted and later as it was pleaded on which parties were heard; that no procedure was prescribed in the rules and even if it had is proved that it provided ⁱⁿ the same, it had come to an end and for extension of the period reasons are to be given and same procedure is to be followed. Further in service confirmation is made only once and no order of confirmation was required and he became a confirmed employee after ^{expiration} ~~confirmation~~ of the service period of two years.

In the written statement that recruitment rules provide two years probation and his promotion was subject to overall assessment during the period of probation. The making of representation against adverse remarks has been denied. The period of probation according to respondents was extended in order to give him an opportunity to improve which he failed to do. In the absence of any specific order as to confirmation the same can not be presumed.

In the recruitment rules for the post of Superintendent in the Institute we have found that the column relating to probation does provide for 2 years probation It does not speak for any extension or passing of any confirmation order at any point of time. Learned counsel for the Respondents made reference to the O.M. dated 28th March 1988 issued by Department of Personnel and Training Government of India a copy of which has been filed on the record. No order has been placed on

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record for applying the said O.M. to the Institute which is a Society and not a Department of Government of India. But from the forwarding endorsement so made and circulation of the same by the Institute to all departments, it has been confirmed that the same has been adopted by the Institute. The said O.M. provides that confirmation will be made in the service of an applicant which will be in the entry grade. After successful completion of probation period officer is to be considered for promotion and the case is to be placed before DPC for confirmation and specific ~~order~~ orders will be issued when the case is cleared from all angles. Thus the same O.M. provides for confirmation and which is to be made in the entry grade which is not the case here as the applicant had already been confirmed.

The said O.M. makes provision in the matter of promotion and makes reference to both the contingency viz where rules provide for probation and or make no provision for the same wherever probation is prescribed the said O.M. provides that after completion of period of probation work will be assessed and if he is found fit order declaring that period was successfully completed will be passed. If not and it may be watched for sometime more, ^{and} ~~the~~ either period ^{may} be extended or probationary period may be extended. Even ^{if} it is accepted then the said O.M. would also apply to the employees of the Institute then there would be no question of confirmation of an employee confirmed on his initial post ~~does not apply~~. If during probationary

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period assessment of work was not considered satisfactory by appointing authority it decides to watch him further the probation may be extended or reversion order would be passed.

~~In the instant case One after another~~ ^l ~~to take the action was taken.~~ In the counter affidavit after para reference to adverse remarks it has not been said that appointing authority made the assessment of his work and if so when and in what manner the same was made and whether there was any other material for the same apart from the adverse remarks. There is no averment that any screening as provided in the said O.M. or otherwise ~~every~~ was done. During extended period of probation no remarks were communicated to him and there is no allegation that any memo or warning was issued or that he was apprised of the fact that there was no improvement in his work.

It is true that the legal provision is that a probation in the absence of provision for maximum period of probation or rule in this behalf can claim right to the post and confirmation ipso facto and can also be reverted or terminated as the case may be if the performance is not satisfactory but that can also depend on facts and circumstances of every case. In the instant case it has got to be accepted that there was no screening of the work of the applicant during probationary period and he was not apprised of any shortcomings and apart from adverse remarks he has overall been ^l ~~raed~~ ^l to be good officer and careless and cares for quantity than quality. It contained one factual aspect that he missed financial

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cash receipts and was not able to render account of advances the correctness of which remark has been questioned by the applicant communicated to him after 7 months and not within the generally prescribed period without any explanation and allowing extended period of probation no shortcoming was pointed out and apparently there was no assessment of work or screening by the appointing authority even this time and earlier also his assessment was that he was good officer, the reversion order being against the rules is penal in nature and arbitrary and as such hit by Article 14 of the Constitution of India, passed without hearing him or taking and considering his version in respect of law.

In connection with the question of confirmation based on probation it would be relevant to refer to the observation made by Supreme Court of India in Shiv Kumar Sharma vs. Haryana State Electricity Board and others (1988(Supp) S.C.C. 669:

"while there is some necessity for appointing a person in government service, probation for a particular period there may not be any need for confirmation of that officer after the completion of probationary period. If during the period of probation a government servant is found to be unsuitable his services may be terminated or if he is found to be suitable he would be allowed to continue in service. The rule of confirmation still in force gives a scope to all executive authorities to act arbitrarily or mala-fide giving rise to unnecessary litigation."

The application, in these circumstances deserves to be allowed and the reversion order dated 9.1.91 (No. 1-13(L)/85-Estt/9600-6) is quashed and consequences will follow. However, it will be open to the Respondents to proceed in accordance with law. There will no order as to costs.

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A.M.

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V.C.

Shakeel/

Lucknow Dt. 2.7.91.