

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 599/87
XXXXXX

198

DATE OF DECISION 6.12.1989

Shri S.D.Chaugule Petitioner

Shri C.U.Singh Advocate for the Petitioner(s)

Versus

Union of India and another. Respondents

Shri R.K.Shetty Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.B.Mujumdar, Member (J)

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 599/87

Shri S.D.Chaugule
C/o. C.U.Singh,
Advocate
Savla Chambers, 6th Floor,
40, Cawasji Patel Street,
Fort, Bombay 400 023.

... Applicant

V/S.

1. Union of India
through Under Secretary,
Ministry of Personnel &
Training, New Delhi.
2. The State of Maharashtra
through Chief Secretary,
Govt. of Maharashtra,
Mantralaya, Bombay.

... Respondents

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar
Hon'ble Member (A) Shri M.Y.Priolkar

Appearances :

Mr. C.U.Singh
Advocate
for the Applicant

Mr.R.K.Shetty
Advocate
for Union of India
i.e. Respondent No.1.

Mr.A.R.Asgekar,
Section Officer
on behalf of Govt. of Maharashtra
i.e. Respondent No. 2.

ORAL JUDGMENT

Dated: 6.12.1989

(PER: M.B.Mujumdar, Member (J))

The points involved in this case are decided by a judgment of this Bench of the Tribunal in Shri Raghunath Shambhunath Rathod v. Union of India and the State of Maharashtra, OA.No. 87/88 decided on 6.10.1988. Still we will give the facts of this case as well as the facts of Rathod's case.

2. The applicant, Shri Sukumar Dharamrao Chaugule was initially appointed as Deputy Collector in the Maharashtra State Civil Service in 1964. In 1981 his name was included in the select list for promotion to Indian Administrative Service. By order dated 25.6.1981 he was appointed as Deputy Secretary in the Agriculture and Co-operation Department of the Govt. of Maharashtra. By notification dated 1.8.1981 he was appointed to the Indian Administrative Service (IAS) on probation and allotted to the cadre of Maharashtra. The applicant was given the year of allotment as 1976. On 1.8.1981 to 9.10.1983 he served as Commissioner of Kolhapur Municipal Corporation. From 10.10.1983 to August 1987 he worked as Chief Executive Officer of the Satara Zilla Parishad. Since August 1987 he is working as Deputy Secretary, Agriculture & Cooperation Department of the Government of Maharashtra.

3. By letter dated 29.1.1987 from the Under Secretary to the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, the applicant was informed that the Government of India had provisionally come to the conclusion that he was not suitable for being a member of the Service and it was accordingly proposed to revert him from the Indian Administrative Service under clause (b) of Rule 12 of the Indian Administrative Service (Probation) Rules, 1954, to the State Civil Service. The applicant was asked to make a representation, if he so wished, in this regard and submit it through the Government of Maharashtra within 15 days from the date of receipt of the letter. The applicant submitted his exhaustive reply dated 23.2.1987. He also submitted a supplementary reply dated 27.8.1987. But about ten days before that the Govt. of India Ministry of Personnel, Public Grievance and Pension passed the impugned order dated 17.8.1987, under Rule 12(b) of the Indian Administrative Service (Probation) Rules, 1954 reverting him to

the State Civil Service of Maharashtra as he was unsuitable for being a member of Indian Administrative Service. The said order was communicated to the applicant by the Joint Secretary to the Govt. of Maharashtra, General Administration Department by letter dated 8.9.1987. The applicant has challenged that order by filing this application.

4. On 11.9.1987 this Tribunal issued notices to the respondents regarding admission and directed that status quo as on that date should be continued till 24.9.1987. By order dated 22.9.1987 that order was continued upto 19.10.1987, provided that the reversion order was not acted upon by that time. On 8.1.1988 after hearing advocates for both the sides, the application was admitted and the operation of the order of reversion dated 17.8.1987 was stayed till the decision of the application.

5. On 6.6.1984, a show cause notice regarding some irregularities committed by the applicant while he was working as Commissioner of Kolhapur Municipal Corporation was served on the applicant. He replied to it on 15.10.1984. Along with letter dated 22.4.1987 a statement containing one charge was served on the applicant. According to the charge, during the period from 19.6.1981 to 4.10.1983 the applicant had committed some irregularities and illegalities which amounted to grave and serious misconduct resulting, in some cases, pecuniary loss to the Kolhapur Municipal Corporation in the five matters mentioned in the charge. The applicant has replied to that charge and we are told that the inquiry against the applicant is completed. The applicant has submitted his final defence statement in May 1988, but final orders are yet to be passed.

6. Union of India, i.e. Respondent No. 1 has resisted the application by filing the affidavit of Mr.N. Sanyal, Deputy Secretary to the Govt. of India. It is pointed out therein that the applicant was appointed to the Indian Administrative Service by promotion from 1.8.1981. The normal period of probation in respect of a promotee officer under Rule 3(2) of the IAS (Probation) Rules, as it stood then, was one year. This may be extended but the total period of probation shall not ordinarily exceed two years. Rule 3A of these Rules provides that where a probationer has completed his period of probation to the satisfaction of the Central Government, he shall be confirmed in the service at the end of his period of probation. However, Government of India decision No. 4 below this rule makes it clear that confirmation of a probationer after completion of period of probation is not automatic but is to be followed by formal orders. It is further pointed out that in January 1986, the Government of Maharashtra forwarded a proposal that the applicant may be reverted to the State Civil Service in view of his poor performance during the probation period. On an assessment of his performance as reflected in the Assessment Reports and Confidential Reports, the Central Government accepted the suggestion of the State Government to revert the applicant and issued a show cause notice under Rule 12(b) of the IAS (Probation) Rules, 1954. The representation received from the applicant was considered after obtaining the comments of the State Government and after careful consideration it was decided to revert the applicant to the State Civil Service of Maharashtra. Orders to that effect were passed on 17.8.1987.

7. On behalf of the Government of Maharashtra, i.e. Respondent No. 2 Mr. Satish Tripathi, Joint Secretary, General Administration Department has filed a detailed reply. After stating the relevant facts and provisions of IAS (Probation)

Rules 1954, it is submitted that if a probationer is under suspension or disciplinary proceedings are started against him, then his probationary period may be extended for such period which in the nature of the circumstances ~~as~~ the Central Government may deem fit and proper. The Central Government has discretion to extend the period of probation beyond the period of two years. It is pointed out that it is not necessary that the extension should be granted always in writing. The fact that the probationer is allowed to continue without confirmation amounts to extension of probation period of the probationer. It is admitted that in the case of the applicant, after his appointment as probationer, no formal orders of confirmation have been passed. Hence, he continues to be a probationer. As the impugned order of reversion dated 17.8.1987 was passed during the probationary period, it is valid.

8. Coming to the prayers made by the applicant in the application, his main prayer is naturally for quashing and setting aside the impugned order dated 17.8.1987 communicated to him by letter dated 8.9.1987 and for directing the respondents to continue him in the Indian Administrative Service. He also prayed for a declaration that he should be deemed to be confirmed in the Administrative Service w.e.f. 25.6.1982 or in any case from 1.8.1982. At the time of arguments the applicant's advocate did not press for confirmation of the applicant from 25.6.1982, but he pressed for his confirmation from 1.8.1982 i.e. from the expiry of one year period from the date of notification dated 1.8.1981, by which the applicant was appointed as member of the Indian Administrative Service.

9. We have just now heard Mr.C.U.Singh, learned advocate for the applicant and Mr.R.K.Shetty for Union of India, i.e. Respondent No. 1 and Mr.A.R.Asgekar, Section Officer who is present on behalf of the Govt. of Maharashtra, i.e. Respondent

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No. 2 along with relevant record. He requested for an adjournment as Govt. of Maharashtra's advocate is busy in the High Court. But we have rejected that request because contentions raised by the Govt. of Maharashtra are the same as raised by the Union of India.

10. Mr. Singh, learned advocate for the applicant heavily relied on the judgment of the Division Bench of this Tribunal dated 6.10.1988 in R.S.Rathod v. Union of India and Govt. of Maharashtra, OA.87/88. According to him, the facts of that case and the points which were raised on behalf of the respondents in that case are the same as in this case and hence we should pass a similar order in this case also. We are inclined to accept his submission. The facts in Mr. Rathod's case as narrated in the judgment are these : Rathod had joined State Civil Service of Maharashtra in 1965. In 1983 he was placed on the select list of the Indian Administrative Service. On 2.8.1983 he was appointed to the cadre post of IAS and a formal notification was issued on 25.11.1983 appointing him to the Indian Administrative Service on probation. He was given the year of allotment as 1979. On 29.1.1987 a notice under Rule 12(b) of the IAS (Probation) Rules was issued to him informing that the Government proposed to revert him from the IAS to the State Civil Service and that he may make a representation in that regard within 15 days. He submitted two representation dated 16.2.87 and 24.3.87. However, before taking any action on the notice dated 29.1.1987, departmental proceedings were initiated against him by serving a charge-sheet on 11.11.87. The applicant replied to that charge-sheet by letter dated 14.12.87. It was thereafter that the impugned order dated 31.12.1987 was issued reverting him to the State Civil Service. However, by the order passed by this Tribunal the order was stayed and it was in force till the decision of the application.

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11. The judgment shows that the same contentions which are raised by the respondents in the present case were raised by the respondents in Rathod's case. But after relying on a judgment of the Supreme Court in State of Gujarat v. Akhilesh C. Bhargav AIR 1987 SC 2135, the Division Bench rejected the contentions. At the end of para 8 of the Division Bench rejected the submission of Mr.R.K.Shetty, learned advocate for Respondent No. 1 in that case (incidentally, he appears for Respondent No. 1 in this case also) that a probationer does not become automatically a confirmed officer. On this point this is what the Division Bench has held :-

"Once it is held that the applicant has become a confirmed officer immediately after the expiry of the probation period of one year the only result would be that simple termination of the applicant by treating him as a probationer is not permissible. If at all, the Government can hold departmental proceedings, if it is alleged that the applicant has committed any misconduct which can be dealt with in such proceedings.

In view of the above discussion, the impugned order reverting the applicant from the I.A.S. to the State Civil Service by treating him as a probationer is liable to be struck down."

12. Para 10 of the judgment shows that Mr.C.U.Singh, learned advocate for Rathod in that case and who also appears for the applicant in the present case, had submitted an alternative submission. That submission was that the impugned order amounts to imposing a penalty for the alleged misconduct and such an order is not permissible if it is assumed that the applicant still continues to be a probationer. In para 11, the Division Bench has pointed that the question as to whether simple reversion of a probationer was a simple reversion or it was by way of punishment is dependant upon the facts and circumstances of each case. By pointing out that before the impugned order of reversion was passed, departmental proceedings were already initiated against Rathod by memorandum

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dated 11.11.1987 and the fact that he had also submitted his reply, the Division Bench held that the impugned order of reversion was issued by way of punishment for the alleged misconduct in the charge-sheet. It may be recalled that in the present case charge-sheet was served on the applicant along with letter dated 22.4.1987, i.e. about four months before the impugned order of reversion was passed.

13. We may point out that the Union of India and the Govt. of Maharashtra have not filed any Special Leave Petition in the Supreme Court against the judgment in Rathod's case. On the contrary, in the replies filed by them in OA. 885/88 (T.K.Kamble v. Union of India and State of Maharashtra) they have specifically relied on the judgment in Rathod's case. Hence, we are inclined to pass a similar order in this case as is passed by the Division Bench in Rathod's case.

14. Mr.R.K.Shetty, learned advocate for Respondent No. 1, i.e. Union of India submitted that Rathod's case does not lay down the correct legal position. In order to show that a different view is possible, Mr. Shetty relied on some judgments of this Tribunal, viz. (i) S.K.Sisodia v. Union of India, Full Bench Judgments: Central Administrative Tribunal, 1986-89, Page 47; (ii) Union of India v. Nirmala Kanta, ATR 1989 (1) (CAT) 146, and (iii) R.K.Bharti v. Union of India, ATR 1989(2) (CAT) 456. None of these cases was in respect of IAS or IPS Rules. However, we may point out that in Sisodia's case which is decided by a Full Bench of this Tribunal, the Tribunal has observed in para 12 page 57 that it is well settled by a catena of cases decided by the Supreme Court that unless the rules otherwise provides, ~~the~~ ^{by} mere completion of the period of probation, a probationer does not stand confirmed against a permanent post. There has to be a declaration by a competent

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authority that he has satisfactorily completed the probation period and that he is confirmed against a substantive post. Until then he continues to be ~~on~~ on probation. There cannot be any dispute about this general proposition. But in Akhilesh C.Bhargav's case the Supreme Court has considered the relevant guidelines in respect of confirmation and on the basis of these guidelines and provisions of IPS (Probation) Rules, it has held that Akhilesh Bhargav had become a confirmed officer of the Gujarat IPS cadre under these rules though there was no specific order of confirmation. It is pointed out by this Tribunal in Rathod's case that the guidelines regarding confirmation of IPS officers as well as the relevant provisions of IPS (Probation) Rules are identical with the guidelines and Rules regarding IAS officers. Hence, the Full Bench's judgment of this Tribunal in Sisodia's case cited by Mr.R.K.Shetty does not help the respondents but it helps the applicant.

15. The next case, i.e. Nirmalakanta's case is decided by the Ahmedabad Bench of this Tribunal. In that case one Mr. Khanna (husband of Nirmalkanta) was promoted from 10.10.1988 initially on probation for six months as machinist Gr.II. The probationary period was further extended by another six months and it expired on 14.10.1981. Thereafter, the probationary period was not extended, but he was reverted to the post of machinist Gr.III by order dated 29.11.1981, i.e. within one and half months after the probationary period expired. The Tribunal held that the mere fact that the probationary period was not extended, does not confirm automatic right of confirmation. Obviously, that case was decided on the basis of some set of rules which are not before us. There could not have been any guidelines ^{in that case} similar to the guidelines in respect of confirmation of IPS and IAS officers, which are referred to by the Supreme Court in Akhilesh Bhargav's case and in Rathod's case decided by this Tribunal. The last case, namely, R.K.Bharthi, in fact does not help the respondents. Mr. Shetty also agrees that this case helps the applicant.

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16. In result, we pass the following order.

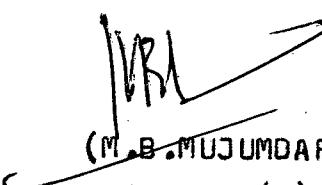
(i) The impugned order of reversion dated 17.8.1987 (at Ex.'AA' to the petition, at page 84) which was communicated to the applicant by confidential letter dated 8.9.1987 (Ex.'Z' to the application at page 83) is hereby quashed and set aside.

(ii) The applicant shall be deemed to have been confirmed as a Member of Indian Administrative Service from 1.8.1982, with consequential benefits which according to rules are due to him.

(iii) The respondents are at liberty to pass final orders in the departmental inquiry which is initiated against the applicant by issuing the charge-sheet which was served on the applicant with confidential letter dated 22.4.1987 (Ex.'Y' to the petition at page 80).

(iv) Parties to bear their own costs.


(M.Y.PRIOLKAR)
MEMBER (A)


(M.B.MUJUMDAR)
MEMBER (J)