

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

O.A. NO: 197/87

199

T.A. NO: ----

DATE OF DECISION 13-3-1992

D.G.Gadge

Petitioner

Mr. Marpakwar

Advocate for the Petitioners

Versus

Union of India and another

Respondent

Mr. Ramesh Darda

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

mbm*

MD

U.C. SRIVASTAVA
(U.C. SRIVASTAVA)

(14)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

O.A.197/87

D.G.Gadge,
E/o Ayachit Mandir,
P.O.Opp.Mujumdar's Math,
Lakdi Pool, Mahal,
Nagpur. 440 002.

.. Applicant

vs.

1. The Director,
Central Board for
Workers Education,
1400, West High Court Road,
Gokulpeth,
Nagpur - 10.

2. Union of India
through
Ministry of Labour
and Rehabilitation,
Department of Labour,
New Delhi. .. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman

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

Appearances:

1. Mr.Marpakwar
Advocate for the
Applicant.
2. Mr.Ramesh Darda
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 13-3-1992
(Per U.C.Srivastava,Vice-Chairman)

The applicant was selected for the post of Education Officer and was sent for training. On completion of training course he was posted at Bombay as Education Officer vide order dtd. 20-2-1982. He was transferred from Bombay in the same capacity to Workers Education Centre at Nagpur vide order dtd. 24-12-1983. The applicant's appointment was on probation for a period of two years. The said period of two years was completed in the year 1984. Even thereafter the applicant continued to work for 10 months and thereafter under rule 6(3) of the Central Board for Workers Education(Staff and Conditions of Service)Regulations,1962 vide order

dated 10th January, 1986 his services were terminated with immediate effect. On behalf of the applicant it was contended that the applicant completed his period of probation satisfactorily for two years and the extension of probation period which could have been extended only in accordance with rules nor there was any communication given to him. It has been further stated that even further extension was made that too was not communicated to him and he was not apprised of the said reasons. In this connection reference has been made ^{to} ~~to~~ service conditions known as the Central Board for Workers Education (Staff and Conditions of Service) Regulations, 1962. The relevant rule 5 reads as follows:

"5. Probation:

(1) Every person appointed to a post by direct recruitment or by departmental promotion with a view to his eventual substantive appointment to that post, shall be on probation for a period of two years.

Provided that the Appointing Authority may, in suitable cases, extend the period of probation for not more than one year, except for special reasons but no employee shall be kept on probation for more than double the normal period

4. An employee shall be confirmed in the post on satisfactory completion of probation if the post against which he is appointed is permanent and substantively vacant, otherwise he will be deemed to have completed the period of probation satisfactorily and will thereafter continue in a temporary capacity until he is confirmed in a permanent post.

5. The decision on the question whether an employee shall be confirmed or whether he should be deemed to have completed the

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period of probation satisfactorily or whether his probation should be extended shall ordinarily be taken within a period of two months after the expiry of the period of probation, and communicated to the employee together with the reasons in case of extension. An ~~ex~~ employee who does not make satisfactory progress, or shows himself to be inadequate for the post in any way, shall be informed of his shortcomings sufficiently before the expiry of the initial period of probation to enable him to make special efforts for improvement."

2. On behalf of the applicant it was contended that ^{the decision} whether the applicant was deemed to have completed the period of probation satisfactorily or his probation period has to be extended is to be taken within a period of two months after the expiry of probation and the same has to be communicated to the employee together with reasons in case of extension. So far as the applicant is concerned no such decision was ever communicated to him nor ^{he} was supplied with reasons for the same and further he was not informed about the shortcomings before the expiry of initial period of probation period in order to enable ~~to~~ him to make special ~~effor~~ efforts to improve. Unless he was apprised of the same no action could have been taken for any shortcomings which might have been there.

3. The respondents in their written reply stated that the case of the applicant came up for consideration before the DPC and the DPC was of the view that his probationary period be extended by one year. This happened in the year 1984. In the year 1985 DPC took the same view. After reviewing the confidential record of the applicant ~~noted~~ the committee

noted that there was no improvement in the work and conduct of the applicant even in the extended period of his probation by one year. The Committee therefore decided that instead of further extending his probationary period by another one year, ~~his~~ ^{his} services should be dispensed with by giving him one month's notice or pay in lieu thereof. It has also been stated that the performance of the applicant as Education Officer at Bombay was not good. The applicant was transferred from Bombay in the month of December 1983 to Nagpur and for the year ending on 31-12-1983 an adverse entry in the confidential report ~~of~~ ~~the~~ ~~the~~ applicant was communicated to him. The said entry reads as follows:

"Quality of performance average; did not show enough enthusiasm in work; could not prepare any study material during the year inspite of repeated ~~reminders~~ reminders; not prompt in attending to allotted work; did not show any creativity or innovative qualities. Counselling orally that unless he improved his performance recommendation would be made to extend probationary period over all performance good."

The applicant stated that despite this entry there was no recommendation for extending his probationary period was made and the respondents have also not stated this thing. Another entry was given to him for the next year on 10-6-1985. It was mentioned that:

"He did not prepare the study notes on all the topics allotted to him; he requires goading. He is not sufficiently careful, and attentive. Devotion to duty not as much as desired. Overall performance fair."

In the earlier year despite the shortcomings his overall performance adjudged to be good, and in the next year it was fair. It appears that subsequently a memo was issued to the applicant on 1-4-1985 regarding certain travelling allowance in respect of which he was warned and his claim for Rs.30/- was rejected. It appears that on the basis of these adverse entries the committee

every time was of the view that the probationary period is to be extended. But the rules referred to above which were applicable to the employees of this department were followed in breach. Even if it could be said that the adverse entries was sufficient notice to the applicant ~~it~~ but it was not the compliance of the rule more so when it was to the detriment of the person. The applicant should have ^{been} informed about the shortcomings so that he should have made efforts for improving the same and further he should have ^{been} apprised that why his probationary period is being extended, but that was not done. Without compliance of the rule Rule 6(3) should ~~not~~ have been resorted to, which has been taken. Accordingly this termination order not being in accordance with the rule deserves ~~to~~ to be quashed and the application is allowed and the termination order is quashed. However, we make it clear that the applicant will not be entitled for any wages or emoluments whatsoever from the date of his termination until date and it will still ~~be~~ be open for the respondents to take action in the matter regarding retention of the applicant in service or terminating his services but in accordance with the law.


(M.Y.PRIOLKAR)
Member(A)


(U.C.SRIVASTAVA)
Vice-Chairman

MD