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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXX~~

NEW BOMBAY BENCH

O.A. No. 87 of 1988
~~XXXXXX~~

DATE OF DECISION 6.10.1988

Shri Raghunath S. Rathod Petitioner

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

Versus

Union of India & Others. Respondent

1. Shri R.K. Shetty Advocate for the Respondent(s)
for respondent No.1

2. Shri G.K. Nilkanth
for respondent No.2.

CORAM :

The Hon'ble Mr. B.C. Gadgil, Vice-Chairman,

The Hon'ble Mr. P.S. Chaudhuri, 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? Yes

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.87 of 1988

Shri Raghunath Shambhunath Rathod,
Additional Collector
(E.G.S.),
Ahmednagar.

... Applicant

V/s.

1. Union of India
through the Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
(Department of Personnel &
Training),
New Delhi.
2. The State of Maharashtra
through the Chief Secretary,
Government of Maharashtra,
Mantralaya,
Bombay-32.

... Respondents

Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil
Hon'ble Member(A), Shri P.S.Chaudhuri

Appearance:

1. Shri C.U.Singh
Advocate
for the applicant.
2. Shri R.K.Shetty,
Advocate
for respondent No.1.
3. Shri G.K.Nidkhanth,
Advocate
for respondent No.2.

JUDGMENT:-

Dated: 6.10.1988

(PER: Shri B.C.Gadgil, Vice-Chairman)

In this Original Application No.87/88 which was
filed before this Tribunal on 29.1.1988, the applicant

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Shri Raghunath Shambhunath Rathod, who was promoted and appointed to the Indian Administrative Service cadre on probation is challenging the order dated 31.12.1987 whereunder he was reverted to the State Civil Service of Maharashtra. The impugned order is passed under Rule 12(b) of the Indian Administrative Service (Probation) Rules, 1954(hereinafter referred to as the 'Probation Rules'). In order to understand the controversy it would be convenient to mention a few facts.

2. The applicant joined the said State Civil Service of Maharashtra as Deputy Collector in 1965. In 1983 he was placed on the select list of the Indian Administrative Service (I.A.S.). On 2.8.1983 he was appointed to a cadre post of the I.A.S. and a formal notification dated 25.11.1983 was issued appointing the applicant to the Indian Administrative Service on probation (vide Exhibit-A to the application). On 17.10.1985 the applicant was given the year of allotment as 1979, (vide Exhibit-C to the application). On 29.1.1987 (vide Exhibit-M to the application) a notice was issued to the applicant under Rule 12(b) of the Probation Rules informing the applicant that the Government proposed to revert the applicant from the I.A.S. to the State Civil Service and that the applicant may make a representation in that regard within 15 days. The applicant submitted two representations dated 16.2.87 and 24.3.1987 (vide Exhibit-N and O to the application). However, before taking any action

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on the basis of the notice dated 29.1.1987 departmental proceedings were initiated against the applicant and a charge sheet relating to the departmental enquiry was served on the applicant on 11.11.1987. The said charge-sheet is at Exhibit-1 to the reply of respondent No.2. The applicant submitted his reply to those charges on 14.12.1987. It is thereafter that the impugned order dated 31.12.1987 was issued for reverting the applicant to the State Service. By order of this Tribunal the said order has been stayed and the applicant continues to be in the I.A.S.

3. The applicant challenges the above mentioned reversion order on various grounds. In the first place it is submitted that on proper construction of the Probation Rules and the guide lines in respect thereof the applicant stood confirmed as an I.A.S. Officer before the impugned order was passed and that therefore the order reverting the applicant is bad as it is issued on the hypothesis that he continued to be a probationer. The alternative contention of the applicant is that the impugned order constitutes the imposition of a penalty in the garb of the reversion of a probationer and that this is not permissible. The third contention of the applicant is that a probationer cannot be reverted unless he is found to be unsuitable and that there was no data before the concerned authority on the basis of which a decision can be taken about the unsuitability of the

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applicant for being continued as an I.A.S. Officer. There are certain other points raised in the application; however, it is not necessary to state them.

4. The respondent No.2 resists the application by filing an affidavit in reply. It is submitted that the applicant continued to be a probationer at the time when the impugned order was passed and hence the applicant's reversion is quite legal and proper. As regards the factual aspects, respondent No.2 contended that the applicant was not found fit for confirmation on account of his mis-conduct, suspicious conduct and poor performance. Respondent No.2 has produced at Exhibit-1 the articles of charges framed against the applicant on 11.11.1987. The applicant has given a reply dated 14.12.1987 to those charges. Respondent No.2 in paragraph 15 has stated that the explanation dated 14.12.1987 tendered by the applicant was considered and that after considering all the material it was found that the misconduct of the applicant was so serious that he deserves to be reverted from the I.A.S. It was denied that there was no material before the Government on the basis of which the decision about the unsuitability of the applicant could be taken.

5. The respondent No.1 (Union of India) has contended that the applicant continued to be a probationer and that there was no automatic confirmation. It was contended that that there ought to be a specific order and in the absence of such order the applicant

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would continue to be on probation. It was denied that the reversion of the applicant is a penal measure.

It was alleged that the reversion was ordered after due consideration and scrutiny of the various records and the representations which were examined in consultation with the State Government who were in a better position to judge the claims of the applicant.

6. Shri C.U.Singh, learned advocate for the applicant, contended that the various provisions of the Probation Rules coupled with the concerned guide lines would lead to a conclusion that the applicant stands confirmed though there is no specific order in that respect. As against this Shri R.K.Shetty and Shri G.K.Nidkanth, learned advocates for respondents No.1 and 2 respectively, contended that there cannot be such confirmation and that in order to consider this question it will be necessary to refer to certain provisions of the Probation Rules and more particularly part of Rule 3 and Rule 3-A. Sub rule 3(2) provides that every person recruited to the service in accordance with the promotion regulations shall be appointed on probation for a period of one year. A proviso to that sub rule states that any period for which such promotee is appointed to a cadre post may be counted towards the probation period. It will be better if we re-produce sub rule(3) and sub rule (3-A) of rule 3. They read as follows:

"3. Period of Probation

3(1)...
3(2)...

3(3)... The Central Government may, if it so thinks fit in any case or class

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of cases extend the period of probation subject to the conditions, that-

- (a) the total period up to which a person recruited to the service referred to in sub-rule(1) may be kept on probation, shall not ordinarily exceed four years; and
- (b) the total period upto which a person recruited to the service referred to in sub-rule(2) may be kept on probation, shall not ordinarily exceed two years.

(3-A)

Notwithstanding anything contained in sub-rule (3), if during the period of probation, a probationer is placed under suspension, or disciplinary proceedings are contemplated or started against him, or an investigation, inquiry or trial relating to a criminal charge is pending against him, the period of his probation may be extended for such period as the Central Government may think fit in the circumstances of the case.

3-A

Confirmation- Where a probationer has completed his period of probation to the satisfaction of the Central Government he shall, subject to the other provisions of these rules, be confirmed in the Service at the end of his period of probation."

In the present case there is no dispute that the Government has not passed any specific order extending the probation period for more than one year. It was urged by Shri C.U.Singh that the above mentioned rules should be applied to him and that unless an order is passed extending the period of probation the probationer would stand automatically confirmed to the post. As against this Shri R.K.Shetty and Shri G.K.Nilkanth submitted that there cannot be such automatic confirmation simply because there is no final order extending the probation period. Shri R.K.Shetty relied upon the

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decision of the Supreme Court in the case of State of Uttar Pradesh V/s. Akbar Ali Khan reported in 1967(I) L.L.J. 708. The relevant head note reads as follows:-

"....There is no rule that on the expiry of the period of probation the probationer shall be deemed to have been confirmed in the post he is holding as a probationer..."

It may be noted that in the case before the Supreme Court, the rule prescribed a probation period of two years which could be extended upto three years. Further extension of period was also permissible subject to the sanction of the Governor. The respondent before the Supreme Court was continued in the post without any order either extending probation or confirming the applicant to the post. The Supreme Court held in substance that absence of an order extending the period of probation would be tantamount to confirmation. Similar view was also taken by the Supreme Court in the case of Kedar Nath Bahl V/s. The State of Punjab & Others reported in A.I.R.1972 SC 873. Shri R.K.Shetty therefore urged that it would not be possible for the applicant to contend that he stands confirmed immediately after the initial probation period was over. Shri C.U.Singh, however, contended that this legal position would not be available to the respondents in the present case. He advanced two reasons. According to him under sub-rule 3(3)(b) the probation period shall not ordinarily exceed two years. Sub-rule 3(3-A) also provides that notwithstanding the above provision

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the probation may be extended for such period as the Central Government may think fit if during the probation period disciplinary proceedings are contemplated or started against the probationer. Shri C.U.Singh, therefore, urged that these two provisions contemplated a specific order on the part of Government for extending the period of probation and that in the absence of such order the applicant cannot be deemed to be on probation for an indefinite period.

7. All India Services Manual, Part-II has noted certain decisions taken by the Government of India and on page 49 at note No.4 to Rule 3-A, the Government's decision that the confirmation of a probationer after completion of the period of probation is not automatic but is to be followed by formal orders has been reproduced. In fact the said Government decision is based upon the legal position as laid down by the Supreme Court. It would not, therefore, be possible for Shri C.U.Singh to contend that there would be automatic confirmation on the basis of the interpretation of the above mentioned rules. Shri C.U.Singh, however, urged that the said rules coupled with the guide lines issued by the Government would mean that there would be a automatic confirmation unless the Government acts in accordance with the guide lines. The copy of the guide lines are attached at pages 53 and 54 of the All India Services Manual Part-II which the applicant has reproduced at page 40 of the compilation. The

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relevant guide lines are as follows:

Guide line No.i provides that assessment of suitability for absorption in the service should not be treated as a mere formality and that the power to discharge under Rule 12 should be used systematically and vigorously. It further states that a probationer who is found not to possess the basic qualities of character and ability should be discharged early from the Service and that there is little to be gained by continuing such a probationer in service for long.

Guide line No.ii states that it is not desirable that member of the Service should be kept on probation for years as happens occasionally at present, and that save for exceptional reasons, the period of probation should not be extended. Shri C.U.Singh relied upon guide lines No.iii and iv. They read as follows:-

Guide line No.iii: " The decision whether a member of Service should be confirmed or the period of his probation should be extended should be taken soon after the expiry of the initial probationary period, that is, ordinarily within six to eight weeks thereof, and communicated to him together with the reasons in case of extension. With a view to enabling the Central Government to take a prompt decision in each case, the assessment report in the prescribed form, covering the period of practical training in the state should be sent to the Department of Personnel and Administrative Reform immediately after the training is over."

Guide line No.iv: " A probationer, who is not making

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satisfactory progress or who shows himself to be inadequate for the Service, in any way, should be informed of his shortcomings well before the expiry of the original probationary period so that he can make special efforts at self-improvement. This can be done by giving him a written warning to the effect that his general performance has not been such as to justify his confirmation in the Service and that, unless he showed substantial improvement within a specified period, the question of discharging him from the Service would have to be considered. Even though this is not required by the rules, discharge from the Service being a severe, final and irrevocable step, the probationer should be given such an opportunity before taking the drastic step of discharge."

Shri C.U.Singh argued that these guide lines would indicate that the decision to confirm the officer or to extend his probation period should be taken soon after the expiry of the initial probation period and ordinarily within six to eight weeks thereof. It is expected that the Government should communicate the reasons for extension of the probation period and that the Officer should be informed of his shortcomings well before the expiry of the original probationary period so that he can make efforts for improvement. The argument that Shri C.U.Singh advanced is that the probationer stands confirmed if these guide lines are not followed and no action is taken in pursuance thereof. Shri R.K.Shetty and Shri G.K.Nilkanth contended that omission to take

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action exactly as detailed in these guide lines would not confer the right on an officer to contend that he stands automatically confirmed. Shri R.K.Shetty submitted that these guide lines would not alter the basic principle that a probationer does not stand confirmed simply because he continues in service without any order extending the period of probation.

8. It would have been necessary for us to consider this contention of Shri Shetty in detail in order to find out as to whether the omission to comply with the guidelines would confer any right of automatic confirmation on an officer. However, it is not necessary for us to consider this point in detail particularly when the Supreme Court had an occasion to consider the effect of similar rules and guide lines in the case of State of Gujarat V/s. Akhilesh C. Bhargav and Others, reported in A.I.R. 1987 SC 2135. It was a case of a Probationer I.P.S. Officer. There are separate rules known as Indian Police Service (Probation) Rules 1954. Those Rules contain provisions similar to Rules 3 and 3-A of the Indian Administrative Service (Probation) Rules, 1954. Those Rules along with the guide lines were interpreted by the Supreme Court. Guide line No.ii in respect of the police probationers is similar to guide line No.ii for I.A.S. probationers mentioned above. The Supreme Court held that these guide lines do not run counter to the Indian Police Service (Probation) Rules and the validity thereof cannot be disputed. Paragraph 7 of the judgment

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reads as follows:-

"....We are of the view that the rules read with instructions create a situation as arose for consideration by this Court in the case of State of Punjab V. Dharam Singh (1968) 3SCR(AIR 1968 SC 1210)...."

Thus, the Supreme Court held that the Police Officer stood confirmed in the cadre and that his service cannot be terminated by an order of simple discharge.

Shri R.K.Shetty tried to urge before us that mere omission to follow guide lines would not lead to a situation that a probationer would automatically become a confirmed officer. However, it will not be open for us to entertain such a submission particularly when the Supreme Court has construed as mentioned above the effect of the rules and guide lines put together. In this background it will not be possible for Shri R.K.Shetty to make certain submissions for the purpose of contending that a probationer does not automatically become a confirmed officer.

9. 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 held 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

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State Civil Service by treating him as a probationer is liable to be struck down.

10. Shri C.U.Singh put forth an alternative submission. His contention is that the impugned order constitutes imposing a penalty for the misconduct of the applicant and that such an order is impermissible if it is assumed that applicant still continues to be a probationer. According to him a probationer can be discharged, or reverted as the case may be, if he is found unsuitable for the post but such action cannot be taken on the basis of misconduct on the part of the applicant. Shri C.U.Singh contends that this would be violation of Article 311 of the Constitution inasmuch as the applicant has been removed from service without holding a proper enquiry. It is true that the impugned order (Exhibit-P) dated 31.12.1987 does not attach any stigma on the applicant. It only states that the applicant is reverted under Rule 12(b) of the probation Rules to the State Civil Service of Maharashtra. Before passing this order the Central Government had issued a show cause notice (Exhibit-M at page 57 of the compilation) dated 29.1.1987 stating therein that the Government had provisionally come to the conclusion that the applicant was not suitable for being a member of the I.A.S. and that it was proposed to revert the applicant to the State Civil Service under Rule 12(b). The applicant was called upon to make any representation in this regard if he so wished. The applicant made two

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representations dated 16.2.1987 and 24.3.1987. Shri R.K.Shetty contended that after considering these representations the Government has taken a decision that the applicant was not suitable for being continued in the I.A.S. and that therefore the impugned order is quite legal and proper. Shri C.U.Singh, however, urged that there was nothing on record to show that the applicant was not suitable for being continued in the Service. On the contrary the applicant has pleaded in paragraph 6(i) to (1) of his application as to how he has done his job in an efficient manner. Shri C.U.Singh also relied upon certain letters received by the applicant from superior officers appreciating the work done by him. These letters together are at Exhibit-I, J, K and L (vide pages 49 to 55 of the application). There is one report that was received by the applicant, it is at page 53 of the compilation and it is dated 2nd July, 1984. That letter reads as follows:-

" The confidential report on you for the year 1983-84 shows that you have been very quick in picking up the threads in developmental activities and the rate of progress increased rapidly under your charge. It however, shows that you need more planning in your work. Also you like to do things by yourself.

Please acknowledge receipt of this letter."

The respondents contend that the above mentioned letter is an adverse report. As against that, Shri Singh urged that it is a complimentary report with ^a rider that the applicant still needs more planning in his work. The respondents relied upon certain other adverse reports.

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However, it is common ground that those reports were not communicated to the applicant till the impugned order was passed. In fact they were communicated during the pendency of these proceedings.

11. Before us a number of decisions were cited to show that a probationer can be reverted to his original post or his services can be terminated if he is found unsuitable to hold the post. Similarly a number of decisions were also cited for the purposes of showing that such termination though in innocent language may constitute the imposition of a penalty and such penalty would not be permissible without holding a departmental enquiry. In our opinion it is not necessary to mention all these decisions in view of the fact that the above mentioned position cannot be disputed either by the applicant or by the respondents. The question as to whether simple reversion of a probationer would constitute a simple reversion or is by way of punishment is dependant upon the facts and circumstances of ~~the~~ each case. We have to find out the substance of the order on the basis of the circumstances preceding and attendant circumstances. It may be noted that before the impugned order was passed departmental proceedings were already initiated by issuing the memorandum of charges on 11.11.1987. The applicant has given his written statement in reply to those charges on 14.12.1987. As to how the Government dealt with the case of the applicant can very well be considered on the basis of the affidavit in reply filed

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by the respondent No.2. It is true that it was contended that the applicant was found unsuitable for the I.A.S. on the basis of his performance. However, the respondent No.2 in paragraph 12 has specifically stated as follows:-

" I therefore submit that because of his suspicious conduct and poor performance the applicant is not fit for confirmation in the I.A.S."

In paragraph 15 the position is made clear by stating as follows:-

" I say and submit that Respondent No.1 carefully considered the explanation dated 14.12.1987 tendered by the applicant and after consideration of all the material it was found that misconduct of the applicant was so serious that he deserves to be reverted from I.A.S. to State Civil Service from which he has been promoted."

It is material to note that the explanation dated 14.12.1987 is really a reply to the charge-sheet submitted by the applicant on the charges framed on 11.11.1987. Thus, that reply has been considered for deciding the question as to whether the applicant is to be retained in the I.A.S. and a finding was recorded that the misconduct of the applicant was so serious that he deserves to be reverted from I.A.S. In fact the reply of 14.12.1987 is given as the written reply in the departmental enquiry. The said reply cannot be considered for passing an order of simple reversion particularly when the correctness of that reply can be decided upon only after a departmental enquiry has been

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held and findings on the charges recorded. In the above mentioned peculiar facts and circumstances, we hold that in the present case the impugned reversion is really by way of punishment for the misconduct alleged in the chargesheet on which departmental proceedings are in progress. In substance the department took into account the written statement of the applicant to those charges and then passed the impugned order. The impugned order along with the connected circumstances show that the penalty of reversion to the State Civil Service was imposed in the garb of an ex-facie innocuous order. This is not permissible and on this ground also the impugned order is liable to be struck down.

12. The result, therefore, is that the application succeeds as follows:

The applicant has become a confirmed Officer in the I.A.S. cadre and his reversion to the State Civil Service of Maharashtra by the impugned order is struck down as not permissible as discussed in this judgment. On the basis of orders passed by this Tribunal the applicant is continuing in the I.A.S. and hence no orders in that respect are necessary. However, it is made specifically clear that this order would not come in the way of the respondents to proceed with the departmental enquiry that they have initiated against the applicant

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on 11.11.1987 and to pass an appropriate orders
in accordance with the findings based upon evidence
that would be led in those proceedings. Parties
to bear their own costs.

B.C. Gadgil
(B.C. Gadgil)
Vice-Chairman

P.S. Chaudhuri
(P.S. Chaudhuri)
Member (A)