

CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY

DATED THIS THE 17TH DAY OF JULY, 1987

PRESENT:

Hon'ble Mr.Justice K.S.Puttaswamy,
 & ..Vice Chairman
Hon'ble Mr.L.H.A. Rego. .. Member (A)

TRANSFERRED APPLICATION NO.47/1986

Nilkanth Ramchandra Kukade,
Aged 54 years,
Occupation Service,
residing at 20 Chitralekha,
Behind R.C.Church, Colaba,
Bombay 400 005. .. Applicant.

(By Sri Dhakephalkar, Advocate)

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1. Engineer in Chief,
Army Headquarters, DHD,
P.O. New Delhi-11.
 2. Chief Engineer, Southern
Command, Pune-411 001.
 3. Chief Engineer,
Bombay Zone, 26, Assaye
Buildings, Colaba, Bombay.
 4. Union of India
(Notice to be served upon
the Secretary, Ministry of
Defence, New Delhi).
 5. S.A. Pawaskar,
Senior Architect,
26, Assaye Building,
Colaba, Bombay.
- .. Respondents.

(By Sri M.I.Sethna, Advocate)

This application coming on for hearing, Member(A) made the following:

ORDER

This is a writ petition transferred to this Tribunal by the High Court of Judicature, Bombay under Section 29 of the Administrative Tribunals

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Act, 1985 and is registered as an Application anew. The applicant challenges the impugned order dated 18-7-1985 (Exhibit-E), passed by respondent ('R') No.4, reverting him from the grade of Architect (Group-B) to that of Assistant Architect, with a prayer, that the same be quashed and he be declared to have been appointed permanently, to the post of Architect (Group-B) with effect from 30-1-1984, in the pay scale of Rs.1100-1600 and confirmed in that post. He also prays for consequential relief, on his reinstatement as Architect, (Group-B) from the date of his reversion, namely, 18-7-1985.

2. The relevant background to this case is as follows:

The applicant was, on the recommendation of the Union Public Service Commission ('UPSC'), appointed in a temporary gazetted Class-II post of Assistant Architect in the Military Engineering service, under the Union Ministry of Defence, in the pay scale of Rs.350-900 on 24-9-1963, under the terms and conditions specified in the Memorandum dated 24-9-1963 (Exhibit-A) issued by R-4. He was confirmed in this post with effect from 25-8-1966, according to the communication dated 3-5-1982 (Exhibit-B). He was promoted as Architect, according to the letter dated 5-8-1981 (Exhibit-C) by R-1, subject to the conditions specified in Article 202 and the decisions of the Government of India ('GOI') thereunder, as contained in the Civil Services Regulation (Chaudari's Compilation) ('CSR' for short) and to his being placed on probation for a period of two years.

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3. The applicant was initially placed on probation for a period of two years from 30-1-1982, under Sri S.A.Pawaskar, Senior Architect - R-5. This period of probation expired on 29-1-1984 but was extended for a period of one more year thereafter, according to the Memorandum dated 16-11-1984 (Exhibit-D) by R-4. Even during this extended period of probation, the applicant was placed under R-5. According to the Memorandum dated 18-7-1985 (Exhibit-E) from R-4, it is seen that the probationary period of the applicant was extended for a period of one year, beyond 29-1-1984, as his work during the initial period of two years on probation, was not found to be satisfactory. The question as to whether the period of probation of the applicant was to be further extended or not, was considered by the Departmental Promotion Committee ('DPC'), which proposed that he should be reverted, to the grade of Assistant Architect. He was accordingly reverted to that grade, under the aforesaid Memorandum dated 18-7-1985 and the applicant was deemed to be on further extended period of probation, from 30-1-1985, to the date when the aforesaid Memorandum dated 18-7-1985 was served on him. The applicant states, that the aforesaid Memorandum dated 18-7-1985 was actually served on him on 17-8-1985 whereafter, he preferred an appeal to R-4 on 25-9-1985. Since there was no response thereto, he was constrained to file a writ petition in the High Court of Judicature, Bombay for necessary relief, which has since been transferred and is before us now, for consideration.

4. Pleading the case of the applicant, his learned counsel Sri Dhakephalkar contended, that the

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aforesaid impugned order dated 18-7-1985, (reverting his client) passed by R-4, was discriminatory and arbitrary, in that, it was based on adverse remarks entered in the three consecutive Annual Confidential Reports (ACRs), by the very same Reporting Officer viz., Sri Pawaskar - R-5, who was biased and prejudiced against him; that the said order of reversion, was in violation of the decisions^{of} and the procedure prescribed by the Government of India, in regard to the review of ACRs, particularly ^{of} Article 202 of the CSR and the decisions of the GOI thereunder; that the order of reversion of his client without confirmation by the UPSC, on the recommendations of which, the applicant was appointed as an Assistant Architect, was void and inoperative in law; that the applicant was not given an opportunity to show cause, to represent against the above order of reversion, as required under Rule 55B of the Central Civil Services (Conduct) Rules 1964 and as such, the order of reversion was ultra vires, being against the provisions of the Constitution and of the service rules and regulations applicable to him and, therefore, the same needs to be set aside and the applicant be deemed to have been appointed as an Architect, with effect from the date of expiry of the initial period of his probation i.e., from 30-1-1984.

5. Sri Dhakephalkar submitted, that R-5 bore animus towards his client, for the various reasons and instances cited, in paras 18(a) to (f) of his application and, therefore, he was biased and prejudiced against the applicant. Sri Dhakephalkar also referred to the incidents narrated in para 18(d) and (e) ibid,

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whereby, R-5 intently handicapped his client, from performing his duties with the desired promptitude and efficiency. In order to fortify his contention, as regards mala fides, arising out of prejudice and bias nurtured by R-5 against his client, Sri Dhakephalkar relied on the ruling of the Constitution Bench of the Supreme Court in S. PARTAP SINGH v. STATE OF PUNJAB (AIR 1964 SC 72) which says, that if the impugned orders are motivated by an improper purpose, they are vitiated by mala fides and that if the dominant purpose is unlawful then the act itself is unlawful.

6. The next contention of Sri Dhakephalkar was, that the order or reversion of his client, according to Memorandum dated 18-7-1985 issued by R-4, was in effect 'reduction in rank', within the meaning of Article 311(2) of the Constitution, in that, he was given no opportunity to show cause against his reversion. This reversion, therefore, was of the nature of punishment, resulting in serious civil consequences to his client. In this connection he referred to the ruling of the Supreme Court in P.C. WADHWA v. UNION OF INDIA (AIR 1964 SC 424) to lend force to the point he sought to make.

7. Sri Dhakephalkar next contended, that the adverse remarks entered in the ACRs of the applicant consecutively, for the Reporting Years, namely, 1981-82, 1982-83 and 1983-84, were communicated to him on 23-6-1983, 19-3-1984 and 28-12-1984 respectively. These ACRs, he said, are written for the period from 1st October of the preceding year to 30th September of the year succeeding. According to Sri Dhakephalkar, these adverse remarks in the ACRs, were communicated

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to the applicant far too late, with an ulterior motive of jeopardising his service career. Besides, these adverse remarks were vague and stereotype and did not pin-point any specific defect or lapse on the part of the applicant, so as to warrant his reversion to the grade of Assistant Architect. The order of reversion of the applicant, according to Sri Dhakephalkar, was based entirely on these adverse remarks, entered in the ACRs of the applicant, all initiated by R-5, who was biased and prejudiced against him and, therefore, the reversion of the applicant, was violative of the principles of natural justice.

8. Sri Dhakephalkar submitted^{LA} that the promotion of the applicant as Architect, according to Exhibit-C, was subject to the conditions specified in Article 202 of the CSR and the decisions of Government of India thereunder, but these instructions were not faithfully implemented by the respondents. He invited our attention, in particular, to paras (3)(iii), (vi), (viii) and (ix) of the decisions of the GOI, under Article 202 of the CSR. For ease of reference, these GOI's decisions are reproduced below:

(3) (iii) A probationer should be given an opportunity to work under more than one officer during the period of his probation and reports on his work obtained from each one of those officers. The reports on his whole period may then be considered by a Board of senior officials for determining whether the probationer concerned is fit to be confirmed in service. For this purpose, separate forms of report on the probationers, which should be distinct from the usual confidential report forms may be devised for each of the services in consultation with the O. & M. Division of the Cabinet Secretariat.

(vi) It would be desirable to have uniformity as regards the period of probation in different Services and it is

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therefore recommended that the period of probation should normally be two years; but where there are any special reasons for prescribing a longer or shorter period, a suitable period may be fixed in consultation with the Ministry of Home Affairs.

(viii) While the normal probation may certainly be extended in suitable cases, it is not desirable that an employee should be kept on probation for years as happens occasionally at present. It is therefore suggested that, save for exceptional reasons, probation should not be extended for more than a year and no employee should be kept on probation for more than double the normal period.

(ix) The decision whether an employee should be confirmed or his probation extended should be taken soon after the expiry of the initial probationary period, that is ordinarily within six to eight weeks and communicated to the employee together with the reason in case of extension. A probationer who is not making 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.

9. Sri Dhakephalkar pointed out, that the respondents had deviated flagrantly, in the following respects, from the above decisions of the GOI, to the detriment of the service career of his client:

(i) He was not afforded an opportunity to work under more than one officer during the period of his probation to facilitate an objective assessment of his performance through a report from each of these officers. These reports were not considered by a Board of senior officials, for determining whether the applicant had satisfactorily completed his period of probation and was fit to be confirmed in service.

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- (ii) Separate forms of assessment reports distinct from the usual ACRs to facilitate objective assessment as above, declaring the probationary period of the applicant were not drawn up.
- (iii) The probationary period was extended beyond the normal period for no exceptional reasons and the decision of the competent authority to extend the period of probation was not communicated with reasons to the applicant within the stipulated period of 6 to 8 weeks of expiry of the initial probationary period to enable him to make amends.

10. Laying emphasis on the fact, that the promotion of the applicant was subject to the conditions laid down in Article 202 of the CSR and to the decisions of the GOI thereunder, as aforementioned, Sri Dhakephalkar submitted, that administrative orders/instructions, conferred certain rights on his client and imposed duties on the respondents and these orders/instructions, could make good yawning gaps, in the conditions of service of the applicant and prescribe essential and salutary procedure, for the purpose of securing uniformity in the application of the Rules, if the Rules themselves did not contain any guidelines and criteria to that effect. Consequently, he stressed, that these orders/instructions were binding on the GOI and could not be violated to the prejudice of the Government servant. He relied on the ruling of the Supreme Court, in the cases namely, UNION OF INDIA v. K.F. JOSEPH AND OTHERS (AIR 1973 SC 303) and STATE OF UTTAR PRADESH v. CHANDRA MOHAN NIGAM AND OTHERS (AIR 1977 SC 2411) to substantiate his above submission.

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11. Sri M.I.Sethna, learned counsel for the respondents, assailed the defence of the applicant primarily on the ground, that he accepted without demur, the adverse remarks in his ACRs, communicated to him from time to time, for the Reporting Years 1981-82 to 1983-84, which period was relevant to that of his probation. He said, that the applicant did not raise even a whimper of protest thereon, but virtually acquiesced in the various lapses and defects on his part as brought to his notice, through communication of these adverse remarks, with a direction to show improvement. The adverse remarks communicated to the applicant, according to him, were not vague and stereo-type as remarked by Sri Dhakephalkar, but were clear, explicit and intelligible, and if they were not so, nothing prevented the applicant from representing promptly to the appropriate authority, for elucidation ^{if} whenever necessary. The fact that he did not do so, according to Sri Sethna, could lead to no other inference than that, that he clearly understood the defects/lapses on his part, as pointed out to him through the adverse remarks in his ACRs. It was apparent, he said, that the applicant was challenging these adverse remarks at a far too belated stage, as an after-thought and as a collateral ground, as a vain ground of defence.

12. Sri Sethna repudiated the contention of Sri Dhakephalkar, that the provision of Article 202 of the CSR and the decisions of the GOI thereunder were not complied with. There being only one post of Senior Architect in Bombay, where the applicant

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was posted during his probationary period, Sri Sethna submitted, that the applicant could not have been placed under more than one officer at Bombay, to assess his performance during that period. Besides, when the applicant had an opportunity to work under another officer at Jaipur, as a result of the transfer order served on him on 27-2-1985, he failed to avail of the same.

13. Sri Sethna pointed out, that the procedure prescribed in regard to the writing of ACRs and Special Assessment Reports (SARs) (the latter for evaluation of work during the probationary period), in respect of the applicant, was adhered to and these two forms of reports were distinct and apart and were duly examined by the DPC, before arriving at a decision, to revert the applicant to the post of Assistant Architect.

14. Apart from communication of the adverse remarks in the ACRs for the period from 1981-82 to 1983-84, from time to time, to the applicant, to show improvement, Sri Sethna pointed out, that in two separate communications addressed to him once on 22-3-1983 and the other on 30-5-1983 (which were duly acknowledged by the applicant) the lapses and defects in his performance, were clearly brought to his notice, with instructions to show improvement and, therefore, he submitted, that the applicant could not complain that he was kept in the dark about his performance during his probationary period.

15. The allegation of bias and mala fides, made by the applicant against R-5, he said, were malicious

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and without foundation. If the applicant genuinely felt that R-5 was inimical towards him, he could have promptly represented the matter to the appropriate authority for redress. The fact that he did not do so and that he did not avail of the opportunity of transfer to Jaipur, to serve under another officer, he said, betrayed the mind of the applicant.

16. We have carefully examined the rival pleadings. The learned counsel for the applicant has built his defence mainly on the premise, that the respondents did not faithfully comply with the procedure, as laid down in the relevant decisions of the GOI, ^{la} ~~laid-down~~ ^{ee} under Article 202 of the CSR and that R-5 acted with mala fides, as he was not favourably disposed towards his client. We have examined the procedure adhered to by the respondents, as specified in the decisions of the GOI under the aforesaid Article 202 ibid. We noticed ^{la} that both the ACRs and the SARs, were recorded distinctly, apart, by the respondents, for the relevant period. The reviewing and the counter-signing authorities, had duly entered their remarks in respect of the ACRs and the SARs too, were timely reviewed by R-3. The adverse remarks entered in the ACRs, were sufficiently explicit and clear and the same were communicated to the applicant with fair expedition. The applicant was alerted from time to time, about the lapses/defects noticed in his performance, on as many as five occasions i.e., on 22-3-1983, 30-5-1983, 23-6-1983, 19-3-1984 and 28-12-1984. Besides, counsel for the respondents pointed out, that R-5 had also verbally alerted the

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applicant in this regard now and then. Sri Dhakephalkar brought to our notice, that the communication dated 30-5-1983, alerting the applicant in regard to the defects/lapses noticed against him, was, however, not actually received by the applicant. Even if we assume that this contention of Sri Dhakephalkar is true, there is no reason, as to why the applicant should have remained silent, in respect of the other communications brought to his notice as above, to show improvement. Indolence and inertia on the part of the applicant in this respect, cannot come to his avail, at this belated stage. It is surprising, that the applicant, in spite of these communications, did not at any time, represent against the adverse remarks conveyed to him and as stated earlier, did not even express a whimper of protest. He did not even represent to the appropriate authorities, that these adverse remarks were vague, inexplicit and were not justified, as he now contends, in his belated application before us. He did not even complain about the prescribed procedure not having been followed in this respect. In fact, the applicant accepted the adverse remarks without any demur as and when communicated to him, thereby leading us to infer, that, he acquiesced in the lapses and defects brought to his notice. It is of little avail to the applicant to allege now, so belatedly and that too on a collateral ground, that his reversion to the post of Assistant Architect, was wholly based on these adverse remarks in regard, to which, he did not protest or represent at the right time. We notice^{ed}, that

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the procedure prescribed in the decisions of GOI as outlined below Article 202 of the CSR has been substantially followed, in regard to the maintenance of ACRs and SARs and the adverse remarks entered in the ACRs for the relevant period from time to time, have been communicated to the applicant, within reasonable expedition. Even though the Reporting Officer viz., Sri Pawaskar, R-5, (who, the applicant alleged, was biased and prejudiced against him) entered the remarks in the ACRs, as well as in the SARs, they were duly examined by the higher authorities, who bore no animus towards the applicant. While the remarks of the reporting authority in the SARs, were reviewed by R-3, those in the ACRs were reviewed by as many as 2 authorities viz., the reviewing and the countersigning authorities. The applicant was duly apprised, as to how he was progressing during the period of his probation and it was upto him to bestir himself in time, in case he genuinely felt that the adverse remarks made against him were without warrant or justification.

17. The contention of Shri Dhakephalkar, that the applicant was not placed under more than one officer, during the period of his probation, to facilitate objective assessment of his performance, does not hold water, as Sri Sethna affirmed before us, that this was not feasible, as there was only one post of Senior Architect at Bombay, where the applicant was posted during his probation period. Besides, Sri Sethna pointed out, that the applicant did not avail of the opportunity given to him, of being posted under another

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another officer, consequent to his transfer to Jaipur, in February, 1985. Though Sri Dhakephalkar alleges, that this order of transfer, was communicated to the applicant belatedly and was subsequently unilaterally cancelled, there is nothing to show, that the applicant protested about the same in due time or expressed his desire to proceed to Jaipur, in order to save himself from the animus of R-5 viz., Sri Pawaskar.

18. The question of reversion of the applicant to the post of Assistant Architect was duly examined by the DPC, which comprised senior officers.

19. Viewing the matter in its entirety, we are convinced, that the procedure prescribed by the GOI in its relevant decisions, outlined below Article 202 of the CSR was substantially complied with, by the respondents, in regard to the applicant. We, therefore, reject the contention of the counsel for the applicant, that this procedure was not faithfully complied with by the respondents, to the detriment of his client.

20. As regards the allegation of mala fides against Sri Pawaskar, R-5, though the counsel for the applicant has referred to the various reasons and instances, cited in para 18(a) to (f) of the application, we notice, that nowhere, did the applicant represent the matter to the appropriate authority for redress. What is most strange is, that if the applicant had a genuine complaint against R-5 for nurturing bias and prejudice against him, he should have been all the more alert, to request promptly

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the appropriate authorities, to place him under the charge of another officer, during his period of probation and to expunge the adverse remarks entered by R-5 against him from time to time, owing to bias and prejudice. It is seen, that, at no time did the applicant take recourse to this remedy. This leads us to infer that the contention now raised by the applicant in this regard, is merely an after-thought and a vain attempt to shield his guilt. The ruling in Partap Singh's case relied on by the counsel for the applicant in regard to mala fides, attributed to R-5, does not come to the rescue of the applicant, in the light of the facts and circumstances aforestated.

21. Sri Dhakephalkar brought to our notice, that the applicant had on 23-9-1985, addressed an appeal to R-4 against his reversion, to the post of Assistant Architect but has not received any reply thereto. Counsel for the respondent clarified, that a reply was already sent to the applicant on 30-1-1986 by R-1. We have perused this communication and are satisfied, that the said appeal of the applicant has been disposed of.

22. In the light of our above discussion, we hold, that this application which is devoid of merit, is liable to be dismissed. We, therefore, dismiss the same. No order as to costs.

M.S. Prasad
VICE-CHAIRMAN 17/7/87

[Signature]
MEMBER(A) 17/7/87

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