

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

O.A. No. 240/89

~~ExAxxxNx~~

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DATE OF DECISION 21-6-1991Mr. V.D.Naik

Petitioner

Mr. G.K.Masand

Advocate for the Petitioner(s)

Versus

National Sample Survey Orgn.

Respondent

Mr. P.M.Pradhan

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. 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 ?

( U.C.Srivastava )  
V/C

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

Original Application No. 240/89

Vivek Devraj Naik S/O.  
late Devraj Shrinivas Naik  
8/144, Samata Nagar  
Kandivali(East),  
Bombay 400 101.

... Applicant.

V/s.

1. Asstt. Director,  
National Sample Survey Orgn.  
Sir P.M.Road, Fort  
Bombay 400 001.

2. The Director  
National Sample Survey Orgn.  
(Field Operation Division),  
R.K. Puram, New Delhi.

... Respondents.

Coram: Hon'ble Vice Chairman, Shri U.C.Srivastava  
Hon'ble Member (A) Shri M.Y.Priolkar.

Appearances:

Mr. G.K. Masand, Advocate  
for the applicant and  
Mr. P.M.Pradhan, Advocate  
for the respondents.

JUDGEMENT:

Dated: 21-6-1991

¶ Per U.C. Srivastava, Vice Chairman ¶

The applicant who was appointed on probation as Investigator in the National Sample Survey Organisation after undergoing the process of selection by the Staff Selection Commission on probation has challenged the order dated 16.5.88 terminating his services. It was in response to an advertisement he applied for the post. The appointment letter indicated that the post was temporary but likely to be continued and that he is on probation for two years during which period he could be discharged from service for failure to complete the probationary period including the extended

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period, if any, satisfactorily. He was sent to the training which period of training he successfully completed. Thereafter he proceeded on leave a number of times. On 20th May 1987 after completion of 1st year of probation on 10th October 1986 he was served with a memo and directed to note the deficiencies and remove the same within the second year of probation. Some ten deficiencies were pointed out in the same.

2. According to the applicant, he was the only male member to attend his widowed mother and unmarried sister and had to avail leave either on medical ground or with prior intimation to his superiors. According to the applicant he was not paid his salary in a particular month. He was selected for undergoing training at the Zonal Training Institute at Nagpur for a period of 48 days commencing from 20th July 1987 along with two others but before he could go and join he was informed that Rajendra Patel has been directed to attend the training instead of him and ultimately he learnt that Rajendra Patel did not join the training but the applicant was not allowed to go. His salary for the month of September 1987 was also withheld till regularisation of the unauthorised absence with effect from 17th August 1987. His salary for the month of June 1987 was released in the month of September 1987. He was called upon to explain the lapses vide letter dated 30th September 1987. His salary for the month of October 1987 was again withheld. But on 13th November 1987 his absence of 147 days between 1.7.86 and 23.7.87 was regularised and he was

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intimated that he has to his credit 13 days Earned leave and 10 days half pay leave. He was also warned that unauthorised absence in future would attract disciplinary action against him. On 12.1.88 when the applicant had already completed two years probationary period a memo was given to him informing that it was proposed to extend his probationary period for a period of six months retrospectively with effect from 11.10.1987. In the memo it was mentioned during second year of his normal probation instead of improving, his work had deteriorated and he was directed to note the said deficiency and to remove the same. The applicant further states that because of certain religious ceremony he had to accompany his mother and sister to his native village on 23rd March 1988. He informed his superior officer but he did not recommend his leave and he had perforce to proceed on leave from 21st March 1988.

3. Thereafter on 30.3.88 a memorandum was issued that he was absconding from duties, his whereabouts are not known and calling upon to explain the circumstances under which he was absconding and the applicant was punished by withholding his salary for the month of March 1988 vide memorandum dated 4th April 1988. On 7th April 1988 he was communicated adverse remarks for the year 1987 and vide office order dated 26th April 1988 he was informed that his absence from 21.3.88 has been treated as unauthorised absence as his leave application had been found not to be genuine and the said period would be treated as break in service vide Provisio-II to Fundamental Rules

17-A(iii). On 16th May 1988 a memo was issued to him telling him about his unauthorised absence from duties on 16th May 1988 and he was directed to meet the Regional Assistant Director on 17th May 1988 and on 16th May 1988 itself the said order of termination was given to him.

4. The applicant has challenged the order on the grounds that his termination was by way of punishment and the same attracts Article 311(2) of the Constitution of India in as much as he has been punished without giving an opportunity to defend himself. Further that after completion of two years he has a right to the said post and after three months thereafter it was not open for the respondents to extend the probationary period and the order by which probationary period was extended was illegal. In this connection he has also made reference to the one case decided by the Bombay High Court and the other by the Allahabad High Court.

5. In the written reply filed by the respondents it has been stated that the applicant was absent a number of times and never prior to his absenting himself he moved any application for leave and it was when he wanted to resume duties it is only then either he moved the application or came with medical certificate. So far as his work is concerned the applicant was very irregular in completion of field work allotted to him. For example the applicant was allotted seven samples during the first and second

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sub-round of 42nd Round S.E. survey of which he could complete just one leaving a shortfall of six samples which had to be got completed by reallocating to the other investigators to keep up the time schedule. Again in the first sub-round of 43rd Round of S.E. survey when he was allotted only one sample he could not complete the same and had to be reallocated and completed by investigator to keep up the schedule. Adverse report was promptly conveyed to him and the deficiency was brought to his notice and he was asked to improve his performance. He never discharged his duties and functions efficiently. He completed his first year of probation on 10.10.1986 but the Departmental Promotion Committee could be held only on 15.5.1987 and after going through the report etc. made the observation regarding his deficiencies and directed to remove the same during the second year of probation. During his service of two years, seven months and seven days he was on leave for 210 days (earned leave, commuted leave, half pay leave and extra-ordinary leave) and each time he availed the self-sanctioned leave. Regarding sending him for training it was stated that it was found that he had already undergone the training and that is why instead of him name of other person was sent. He could not join because of his illness and there was no malafide behind it. This was also evident from the fact that absence of the period was even regularised. The Departmental Committee which met on 11.5.1988 reviewed all the necessary documents and recommended that he may be discharged from Government services

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with immediate effect. Thereafter the order was passed and this order was not by way of punishment and no stigma was given to him because his performance was not satisfactory and as he did not improve the same during his probationary period his services had to be terminated. Regarding his salary it was stated that he did not come to office to collect the pay or made any correspondence and the amount according to him withheld was paid to him.

6. It is true that the services of the applicant were terminated after expiry of a period of two years but it is also true that he was never confirmed in service. Even if no order is passed at the end of the probationary period the employee will not be deemed to be confirmed unless rules provide to this effect. No such rule has been pointed out and as a matter of fact the probationary employee will continue to be on probation unless some order in this behalf is passed. The order terminating his services is not stigmatic. In the case of Municipal Corporation, Raipur vs. Ashok Kumar Misra 1991 (1) SCALE the employee was appointed on probation for a period of two years, his services were terminated without enquiry or opportunity of being heard. Although in the said case Rule A was referred to but what is contained in the Rule A of Rule which was under consideration was placed in the appointing letter of the applicant himself. The court observed that before confirmation the appointing authority is empowered to terminate the service of the probationer by issuing one calender month's notice.

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in writing and on expiry thereof the service stands terminated without any further notice. Within three months from the date of expiry of original two years period of probation and within one year's period, the order of termination was made. In this view the question of conducting an enquiry under Classification Control and Appeal(Rules) after giving an opportunity and that too for specific charges does not arise. The court in that case considered the earlier decisions in Omprakash Maurya vs. U.P. Cooperative Sugar Factories Federation, Lucknow & Ors. 1986 Suppl. SCC 95 and the State of Gujarat Vs. Akhilesh C. Bhargav & Ors. 1987(3) SCR 1091 (1987 (2) SCALE page 428). In the case of Akhilesh C. Bhargav supra it was a case of a probationer under Indian Police Service(Probation) Rules 1954. The court made reference to the administrative instructions issued by the Ministry of Home Affairs, Government of India dated 16th March 1973 indicating the guidelines to be followed. The relevant portion of which are as follows:-

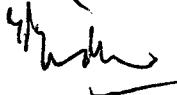
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(ii) It is not desirable that a member of the service should be kept on probation for years as happens occasionally at present. Save for exceptional reasons, the period of probation should not, therefore, be extended by more than one year and no member of the service should, by convention, be kept on probation for more than double the normal period i.e. four years. Accordingly, a probationer, who does not complete the probationers' final examination of within a period of four years, should ordinarily be discharged from the service."

Although these instructions were with reference to the Indian Police Service (Probation) Rules but these instructions have been issued in respect of others also and they form as a guideline and these instructions

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are rather in confirmity with instructions and conditions mentioned in the applicant's appointment. The order of termination in this case was passed within one year of the expiry of the period of two years and the employer found that the work of the applicant during the probationary period was unsatisfactory and that is why his services were terminated. Even though this last extension of six months was granted after the expiry of probationary period of two years but that will not make him a permanent employee or put an end to his probationary career and he will be deemed to be continued on probation. Now when his performance is found unsatisfactory the employer has the right to discharge his services and his services were terminated and the order is not stigmatic and as such there was no question of giving him an opportunity of hearing as the order cannot be said to be by way of punishment. Accordingly we do not find any force in the application which deserves to be dismissed. The learned counsel for the applicant has stated that the applicant has been doing his work satisfactorily and because of unforeseen events he had to proceed on leave. It is for the applicant to approach the employer and the employer can consider his request sympathetically <sup>if</sup> in fact he succeeds in convincing them that in future he will improve his performance and make up all the deficiencies. With the above observation the application is dismissed but there will be no order as to costs.

  
(M.Y. PRIOLKAR)  
MEMBER (A)  
(U.C. SRIVASTAVA.)  
VICE CHAIRMAN