

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 1135/96

Dated this Wednesday the 19th day of September, 2001.

R.G. Dhavale

Applicant

Mr.S.J. Rairkar

Avocate for the
Applicant.

VERSUS

Union of India & Anr.

Respondent.

Mr.K.P. Anilkumar

Respondents.

CORAM :

Hon'ble Shri Justice V. Rajagopala Reddy, Vice
Chairman.
Hon'ble Smt.Shanta Shastry, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library.


(V.Rajagopala Reddy,
Vice Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No.1135/96

Dated this Wednesday the 19th September, 2001.

Coram : Hon'ble Shri Justice V. Rajagopala Reddy, Vice Chairman
Hon'ble Smt. Shanta Shastri, Member (A)

Shri Rajesh G. Dhavale,
Residing at 310, Ghorpade Peth,
Near Ghorpade Peth Police Chowky,
Pune - 411042.

.. Applicant.

(Applicant by Shri S.J. Rairkar, Advocate)

Vs.

1. The Union of India
Represented by:-
The Council of Scientific &
Industrial Research, Anusandhan
Bhavan, Rafi Marg,
New Delhi - 110 011.
2. National Chemical Laboratory,
Dr. Homi Bhabha Road, Pashan,
Pune - 411 008.
Represented by:-
The Director/Administrative
Officer.

.. Respondents.

(Respondents by Shri K.P. Anilkumar, Advocate)

O R D E R (Oral)
[Per : Justice V. Rajagopala Reddy, Vice Chairman]

The applicant challenges the order of extension of probation dated 29.3.1996 for a period of 6 months with effect from 23.3.1996, as well as the order of termination of his appointment dated 15.3.1994.

2. ... The applicant was appointed by Respondent No.2 to the post of Technical Assistant, Gr.VIII and was posted to the Instrumentation Division. He was under probation for a period of 2 years.



By Office Memorandum dated 29.3.1996 his period of probation was extended for a further period of 6 months with effect from 23.3.1996 on the ground that his work and conduct were unsatisfactory. Thereupon it is stated that between the employer and the applicant certain correspondence has been exchanged and he was asked to explain certain complaints received and to which he had submitted his explanation denying the allegations made against him. But the impugned orders were passed extending his probation and terminating his services without assigning any reasons. The present O.A. is therefore filed aggrieved by the above orders.

3. Two questions were raised before us, (i) the extension of the period of probation after the expiry of period of 2 years probation by letter dated 29.3.1996, with effect from 23.3.1996 was not valid and (ii) the order of termination is stigmatic as it was passed having been satisfied that the allegations made against him were proved. Hence a regular enquiry should have been held.

4. We have heard Learned Counsel for the applicant and respondents. The appointment order dated 15.3.1994 says that appointment of the applicant was temporary and he was

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put on probation for a period of 2 years and it is not disputed that the period of probation was extended. It is also undisputed that the order of appointment was liable to be terminated at any time without notice.

The impugned order of the termination reads as follows:-

"Sub: Termination of services of Shri R.G. Dhawale Tech.Asstt. Gd.VIII (Group-III (i)).

The Director, National Chemical Laboratory has terminated the services of Shri R.G. Dhawale, Tech.Asstt. Gr.VIII (Group-III (1) from NCL with immediate effect under clause 2 of his appointment order No.3(14)/C&P/93/Gd.VIII/III (1)/SC dated 15.3.1994".

From the reading of the order it does not show that any stigma has been attached against the applicant. It is in conformity that clause 2 of the appointment order where it was clearly stated that if his conduct and work were not satisfactory, he was liable to be terminated without any notice.

5. It is the contention of the Learned Counsel for the applicant that certain complaints made against him by his superiors which have been denied by the applicant were the sole bars in passing the impugned order. The order though exfacie innocuous, infact it was passed only on finding that he is guilty of the allegations and with a view to penalise him. It is true that no reasons need be assigned for the removal of a temporary employee who was under probation, it is nevertheless permissible by the Courts to lift the veil and see behind the order. To find whether it was sought to be passed with motive that he should be

punished for his misconduct. If the foundation for passing the orders was to penalise the probationer then, it was stigmatic and in that case an enquiry has to be held.

6. It is stated in the reply that the applicant's work and conduct were not satisfactory and he was guilty of dis-obeying the orders of superiors. The allegation that he has been harrassed by the superiors. No material is placed before us to come to 'prima facie' conclusion that there was any such motive. It appears that the respondents were not satisfied with the work and conduct of the applicant so as to keep him and declare his probation as a full member of service. Hence the impugned order was passed terminating his probation. We do not therefore find the contention of the respondents as applicable.

7. The next contention of the applicant is that extension of his probation after the expiry of period of 2 years was wholly unattainable. Admittedly, the applicant was not confirmed after the expiry of period of 2 years. It is stated that applicant joined service on 23.3.1994 and the 2 years' period of probation expires only on 22.3.1996. The period of his probation was extended for another six months with effect from 23.3.1996 to 22.9.1996. It is sought to be contended that this retrospective extension of period of probation is not permissible under law. But we find that the applicant had neither protested against the order of extension of probation nor made a representation against the such extension. He seeks to question it only after he was

terminated by the impugned order. It is however, stated by the Learned Counsel for the respondents that respondents have adopted CCS Temporary Service Rules, 1965. As per the instructions issued by the Government of India, on expiry of the period of probation steps should be taken as regards his confirmation or whether the period of probation should be extended if the probationer had not completed period of probation satisfactorily. The date from which confirmation should be given effect to is the date following the date of satisfactory completion of the prescribed period of probation or the extended period of probation as the case may be. The confirmation of the probationer after completion of the period is not automatic but it is to be followed by formal orders. As long as no specific orders of confirmation or satisfactory completion of probation are issued to a probationer, such probationer shall be deemed to have continued on probation.

8. In view of the above as no orders of confirmation have been passed in case of the applicant, though the period of probation had not been extended before the expiry of the probation period, nevertheless the applicant was deemed to be under probation. Hence, we do not find any illegality in the order of extension of probation with retrospective effect. Further, the specific grievance of the applicant in this O.A. is against the order of termination and not against extension of probation.



9. In the result, the O.A. fails and is accordingly dismissed but without costs.

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(Shanta Shastry)
Member (A).

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice Chairman.

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