

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE 10th DAY OF APRIL, 1987

Present : Hon'ble Shri Ch.Ramakrishna Rao Member (J)

Hon'ble Shri P.Srinivasan Member (A)

APPLICATION No. 650/86(F)

M.Appa Rao,  
Income Tax Officer,  
IV Income Tax Officer,  
No.8, Harinivas,  
1st Main, 6th Cross,  
3rd Phase, Manjunatha Nagar,  
Rajajinagar, Bangalore - 10.

... APPLICANT

( Shri MG.L.Narasimhan ... Advocate )

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Union of India,  
M/o Finance, (Deptt. of Revenue)  
by its Secretary,  
New Delhi.

Under Secretary to the Govt.  
of India, M/o Finance,  
Central Board of Taxes,  
New Delhi.

... RESPONDENTS

( Shri M.S.Padmarajaiah ... Advocate )

This application has come up before the court today.

Hon'ble Shri Ch.Ramakrishna Rao, Member(J) made the following :

O R D E R

The President's pleasure to terminate the services of a Government servant embodied in Article 310 of the Constitution is subject to the conditions set out in Article 311 for exercising it. These conditions, however, apply only to three types of cases namely where a Government servant is 'dismissed or removed' or 'reduced in rank'. It is well settled law that the discharge of a probationer, while still on probation, in terms of his appointment does not fall under Article 311 and that therefore a simple termination of the services of a probationer is not subject to the conditions laid down in that Article. The only exception to this pro-

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position is where the services of a probationer are terminated as a measure of punishment or penalty. The question that arises for determination in this application is as to whether the applicant was still on probation when his services were terminated by order dated 10.4.1986 which is challenged in this application and, if the answer to this question is in the affirmative, whether the termination was a measure of punishment and not a discharge of his services simpliciter.

2. The applicant was appointed as an Income Tax Officer Group A (Junior Scale) on the results of the Civil Services Examination held by the Union Public Service Commission in 1982. The order dated 26.11.1983 issued by the Central Board of Direct Taxes in the Ministry of Finance which is an annexure to this application, inter alia, contains the following terms :-

"... (ii) You will be on probation for a period of two years. During this period you will be under training and will also have to pass the prescribed Departmental Examinations.... The period of probation may be extended at the discretion of the Government, if you do not pass the Departmental Examinations within the prescribed time...

(iii) Government may discharge you from service at any time during the period of probation, if in their opinion, your work or conduct during this period is considered unsatisfactory, or shows that you are unlikely to become an efficient Income-Tax Officer.

(iv) You will be considered for confirmation in service on your successfully completing the period of probation and also if you are found fit in every respect for confirmation..."

The other terms contained in the said order are not relevant for our present purpose. The said order is couched as an offer requiring the applicant to indicate his acceptance immediately and thereafter to report to the Director, National Academy of Direct Taxes, Nagpur, for training between 5th and 15th December, 1983. The applicant accepted the offer and joined the National Academy of Direct Taxes on 18.1.1984. After completing the prescribed training, he was posted as an Income Tax Officer, Group A, in

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Karnataka Charge, from 20.5.1985. On completion of two years of service i.e. on 18.1.1986, no order either extending his probation or confirming him in service was passed, even though he had cleared the required departmental examinations before that date and was also given increments during the period of probation. By an order dated 10.4.86, issued to the applicant under the Signature of the Under Secretary to the Government of India, his services were terminated "with effect from the date these orders are served on him". It is this order which is challenged in this application.

3. Shri M.C.L.Narasimhan, learned counsel for the applicant, contended that the impugned order terminating the services of the applicant had been passed without giving him an opportunity of being heard as required under Article 311 of the Constitution and is therefore liable to be struck down as unconstitutional. The period of probation specified in the offer of appointment was two years and that period had expired on 18.1.1986. Since no order had been passed by that time or even later extending the period of his probation, the implication was that he stood confirmed in service after that date. According to the terms contained in the offer of appointment, the period of probation could be extended at the discretion of the Government only if the applicant had not passed the departmental examinations before the initial period of two years. Since the applicant had passed the departmental examinations by that time, his probation could not be extended. Merely because there was no order of confirmation after the applicant had completed two years of probation, it does not mean that he continued to be on probation till 10.4.1986 when the order terminating his services was passed. There was no indication from the higher authorities at any time that the applicant's performance was not satisfactory. On the

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other hand, he had performed very creditably during the period when he was posted as ITO in Karnataka Charge, having conducted investigation successfully and having detected concealment of income of a high order. The applicant had conducted several surveys under section 133A of the Income Tax Act which no other officer had been able to do. No doubt the immediate superior to the applicant, the Inspecting Assistant Commissioner, Range IV, Bangalore, had addressed a letter to him dated 10.2.1986 suggesting that his disposal of assessments was not satisfactory and that he had not devoted sufficient attention to certain aspects of work. The figures given in this letter was not correct, but the applicant did not give a reply because he understood that it was a routine demi-official communication and similar letters had been issued to many other officers also. This letter, according to Sri Narasimhan, could not be treated as an indication that the applicant's work was unsatisfactory or that he was unlikely to become an efficient Income Tax Officer. Shri Narasimhan also drew our attention to an Office Memorandum No.F.44/1/59-Estt(A) dated 15.4.1959 issued by the Ministry of Home Affairs of the Government of India/<sup>in</sup> which it was stated that it was not desirable to keep an employee on probation for many years and 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. The decision whether an employee should be confirmed or his probation ~~is~~ 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 reasons in case of an extension". The Office Memorandum also directed that a probationer who was not making satisfactory progress or who showed 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 severe efforts at self-improvement."

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The instructions contained in this Office Memorandum had not been followed in the case of the applicant. The question of his confirmation which should have been considered and decision conveyed within eight weeks of completion of two years of probation had not been taken up by the authorities at all till 10.4.86 when his services were terminated. He had not been warned before the expiry of the two year period about his shortcomings, if any, to enable him to make "severe efforts at self-improvement." This being so, it has to be assumed that the applicant's probation came to an end at the end of two years and that thereafter his services could not be terminated without giving him an opportunity of being heard. Shri M.G.L.Narasimhan relied on the decisions of the Supreme Court in AIR 1986 <sup>by</sup> ~~and~~ SC 1844, <sup>and of the Allahabad High Court in</sup> All India Services Law Journal, 1975 page 259...

4. Shri M.S.Padmarajaiah, learned counsel for the respondents refuted the contentions of Shri Narasimhan. When an initial period of probation is prescribed in the offer of appointment and confirmation thereafter is not automatic, Sri Padmarajaiah contended, the Government official concerned is deemed to continue on probation, even without a specific order extending his probation. In the instant case, confirmation after the initial period of two years was not automatic either according to the terms of the offer issued to the applicant or the rules governing the subject. The clause in the offer of appointment giving the discretion to the Government to extend his probation if he did not pass the requisite departmental examination, did not mean that the probation stood terminated after two years if the requisitedepartmental examinations had been passed within that date. The officer clearly said that the applicant would be considered for confirmation in service on successfully completing the period of probation and if he was found

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in every respect fit for confirmation. This meant that only when the applicant was actually considered for confirmation and confirmed by a specific order to that effect, could he be treated as a confirmed officer to whom Article 311 of the Constitution was applicable. On the other hand, his probation would continue till such an order was passed and the Government had reserved its right in the said offer of appointment to discharge the applicant at any time during probation if his work and conduct were considered unsatisfactory and if he was unlikely to become an efficient officer. That was what happened in this case. Government had come to the conclusion that the applicant had failed to complete the period of probation satisfactorily as required under the terms of the terms of the offer, and therefore decided to terminate his services. There was no infirmity in this action as it was a termination simpliciter and was not governed by the provisions of Article 311. If anything, an indication of the unsatisfactory work of the applicant was given to him by the letter of the Inspecting Assistant Commissioner, Range IV, dated 10.2.86 which has been attached as an annexure to the application itself. The instructions of the Ministry of Home Affairs, relied upon by Sri Narasimhan are not conclusive in the matter because they were only in the nature of advisory instructions. Even according to those instructions, the decision to confirm an official or to extend his probation had to be taken ordinarily within six to eight weeks. In this case, the initial probationary period was completed on 18.1.86 and within three months thereafter his services were terminated. Obviously the authorities did not consider him fit for confirmation and so did not issue any order of confirmation. There can be no implication that the applicant stood confirmed after completing the initial period of probation of two years. He therefore pleaded that the application be dismissed.

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5. Having considered the rival contentions carefully, we are of the view that this application has to fail. No doubt, the initial period of probation in the case of the applicant was two years, but the offer of appointment made it clear that confirmation was not automatic after the conclusion of the said period. On the other hand, as can be seen from the relevant terms extracted earlier in this order, the applicant was to be considered for confirmation after successful completion of probation and if found in every respect fit for confirmation. Thus an active consideration and a specific order of confirmation was required before the applicant could be treated as confirmed and not till then. Since no order of confirmation was passed by the Government in his case till his services were terminated, he has to be treated as having continued on probation till the date of termination. We might in this connection usefully extract the observations of the Supreme Court in KEDAR NATH BAHL vs STATE OF PUNJAB AIR 1972 SC 873. This is what their Lordships observed :

"The law on the point is now well settled. Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer."

6. This ruling squarely applied to the facts of the present case. In this view, the applicant was still on probation on 10.4.86 when his services were terminated and so he was not entitled to an opportunity of being heard under Article 311. He was discharged from service in pursuance of clause (iii) of the offer of appointment which we have extracted earlier- The impugned

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order is an order of discharge simpliciter. It attaches no stigma to the applicant and no case of mala fides has been made out on his behalf. We have carefully perused the rulings relied upon by Sri Narasimhan and we find that these rulings have no application here because they are based on different sets of facts.

7. In the circumstances, we have no alternative but to dismiss this application. The application is therefore dismissed. Parties will bear their own costs.

*Chandrababu*  
MEMBER ( J ) 10/4/87

*P. S. S. S.*  
MEMBER ( A ) 10/4/87

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