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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 514 /1991

Date of Decision: 15.11.96

Minakshi P. Tamhan,

Petitioner/s

Shri S. P. Saxena,

Advocate for the
Petitioner/s

V/s.

Union Of India & Others,

Respondent/s

Shri R. K. Shetty,


Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B. S. Hegde, Member (J).

Hon'ble Shri P. P. Srivastava, Member (A).

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?


(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 514 OF 1991.

Dated this 15th, the Friday day of November, 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Minakshi Prabhakar Tamhan,
"Samadhan Apartments",
N.I.T. Layout,
Ravinagar Square,
NAGPUR - 10.

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Applicant.

(By Advocate Shri S.P. Saxena).

VERSUS

1. Union Of India through
the Secretary,
Ministry of Defence Production
& Supplies, South Block,
Delhi Headquarters P.O.,
NEW DELHI - 110 011.

2. Chairman,
Ordnance Factory Board,
10-A, Auckland Road,
Calcutta - 700 001.

3. General Manager,
Ammunition Factory,
Kirkee,
Pune - 411 003.

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Respondents.

(By Advocate Shri R. K. Shetty).

: ORDER :

PER.: SHRI B. S. HEGDE, MEMBER (J)

1. In this O.A. the applicant has challenged the impugned order passed by the respondents vide dated 15.03.1989 and also the order dated 05.03.1989 extending the period of probation and the order dated 11.07.1990 rejecting her appeal for reinstatement in service.

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2. The brief facts are:- the applicant joined initially as L.D.C. in the year 1972 at Ambajhari and later on promoted to the post of U.D.C. on 01.04.1980. Pursuant to the advertisement made by the respondents for the post of Chargeman Grade-II (Non-technical), the applicant while working as U.D.C. applied for the post of Chargeman Grade-II Russian Translation work and she was selected and joined at Kirkee on 12.03.1986 as Chargeman Grade-II. The offer of appointment was given to her vide dated 10.01.1986 which has been accepted by her and she continued in that post. As per the offer of appointment, the probation period is mentioned as two years, which may be extended if necessary. After satisfactory completion of the probationary period, her appointment and service will be temporary. Her services may be terminated at any time during the probationary period by either side without notice.

3. The main thrust of argument on behalf of the applicant is that, though she has completed the probation period, thereafter, in view of her marriage she proceeded on leave in the month of April 1988. Further, since she had not received any adverse remarks during the probation period and as she received no letter on extension of her probation period, termination of service without any show cause notice is illegal and unconstitutional in law. Since her marriage was fixed, she asked for leave in the month of March 1988. The marriage took place on 28.4.1988 and she proceeded on leave from 19.04.1988 to 03.05.1988 which was granted by the respondents. While on leave,

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she sought extension of leave from 06.05.1988 to 04.06.1988 vide her letter dated 08.05.1988. Since she did not report for duty, the respondents vide their letter dated 02.06.1988 rejected the extension of leave and directed her to report for duty forthwith, failing which disciplinary action will be initiated against her. The applicant vide her letter dated 04.07.1988 sought for 60 days leave but the same was not granted and the respondents directed her to report for duty. She produced a medical certificate from Government hospital, Arakkonam and sought for further leave vide her letter dated 07.11.1988. Thereafter she produced a medical certificate from Military Hospital, Madras stating that she is admitted in the hospital w.e.f. 18.11.1988. The respondents vide their letter dated 06.02.1988 directed the applicant to go for a second medical opinion which is required to be obtained from a Medical Board. The applicant did not adhere to the directions of the respondents and replied vide her letter dated 13.12.1988 expressing her inability to appear for the medical opinion. Though the Superintendent of Medical Board called her for the second medical opinion, she did not appear before the Medical Board. Since she did not comply with the directions of the Tribunal. The respondents vide their letter dated 15.03.1989 passed the impugned order terminating her service as Chargeman Grade-II and reverted her to the post of U.D.C. The post of Chargeman Grade-II is not a promotion post from U.D.C. It is a direct recruitment. It is also contended that the Appointing Authority is the General Manager of

Ordnance Factory but the termination order was issued by the Deputy General Manager. However, on perusal of the order, we find that the termination/reversion order passed by the Deputy General Manager was communicated on behalf of the General Manager and there is nothing irregular in the order passed by the respondents.

4. On the other hand, the Learned Counsel for the respondents, Shri Shetty, urged that mere regularisation does not mean that they condoned the unauthorised absence as legal. It is noticed that during the probation period her service was very unsatisfactory and accordingly we directed the respondents to produce the personal file and C.Rs. of the applicant and on perusal of the same, we find that the Competent Authority has graded her as 'Poor' and 'average' capability. She is very irregular and cannot be relied upon. She has not been able to complete the allotted task in a satisfactory manner. Knowledge of Russian Language also not satisfactory. She was given an opportunity to overcome these shortcomings, which she did not comply. Even in the earlier period, the competent authority had recommended for extending the probation period, as her performance was totally unsatisfactory and also stated that even by extending the probation period ^{if} she (does not improve upon) her performance, her service should be terminated as Chargeman Grade-II. There is sufficient material to show that her performance during the probation period was very unsatisfactory, which has been communicated to her. Though she made a representation to the Competent Authority vide dated 10.04.1989, her representation was

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considered and rejected by the Appellate Authority vide dated 11.07.1990 giving cogent reasons as to why her service is required to be terminated. However, on perusal of the records we find that the applicant was appointed for the post of Chargeman Grade-II on 10.01.1986 on probationary period for a period of two years and after the completion of the probationary period, the appointment and service will also be temporary. Her services were terminated while she was on probation. The plea raised by her that the terms and conditions of her appointment under Clause 2(c) clearly stipulates that her services were liable to be terminated at any time during the probationary period by either side without any notice. Therefore, the question of assigning any reason nor issuance of any show-cause notice to her before the termination does not arise. Accordingly, her appeal was dismissed. During the course of hearing, the learned counsel for the respondents draws our attention to the O.M. of the Department of Personnel dated 04.06.1983 in which the conditions for the probation is envisaged, which reads as follows :

"Confirmation of the probationer after completion of the period of probation is not automatic but 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."

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In this connection the Learned Counsel for the applicant draws our attention to the decision of the Supreme Court in Sumati P. Shere V/s. Union Of India [(1989) 3 SCC 311] wherein the Apex Court has held that "the employee should be made aware of the defects in his work and deficiency in his performance. Defects or deficiencies, indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right tract. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability." With great respect, the said decision will not apply to the facts of this case because in the present case, the applicant has been communicated the deficiency during probation period, despite the same she has not improved upon nor cared to be punctual in her attendance. Despite directions by the respondents to go for the second medical opinion, she ignored the direction and did not report for duty nor went for the second medical opinion, which is required before joining duty. The learned counsel for the applicant also relies upon the Principal Bench decision in Ms. Chandra Kumari V/s. Union Of India [1992 (2) CAT 53] wherein the Tribunal held that before terminating a probationer a show cause indicating his deficiencies must be given. As stated above, the applicant has already been communicated the deficiency ~~but~~ she did not care to improve upon her performance. Therefore, as per the terms of offer of appointment, her services have been terminated and was

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referred back to the post of U.D.C. The Learned Counsel


for the applicant has also cited another decision - ATR 1988 (2) CAT 46 | Chuni Lal & Others V/s. Union Of India & Others. This decision also does not apply to the facts of the present case because it only says that reversion without notice is not justified. In the present case before reversion the applicant was asked to improve upon her performance but she did not care to do so. During the course of hearing, the learned counsel for the applicant draws our attention that the applicant has taken voluntary retirement on 26.06.1993 while working as U.D.C. In this connection, it is brought to our notice that [REDACTED] the Tribunal after considering the contentions of the parties had passed the following order on 10.03.1992 :

"The applicant has challenged the impugned order on the variety of grounds. It has been contended that if the applicant was directly appointed, she could not have been reverted. Further, that maximum period of probation was two years and the probation period was expired after two years and as such the applicant was deemed to have been confirmed and even otherwise also her services should not have been terminated. It appears that after terminating her services the respondents by way of concession allowed her to continue as U.D.C. We are not satisfied as the case it is and we are admitting it on the

Despite the fact, the applicant accepted the reverted post of U.D.C., worked there for further two years and then took voluntary retirement. It was open to her at that point of time to reject the reverted post of U.D.C. and her service has been terminated purely on the ground of unsatisfactory performance, which is crystal clear and the competent authority is empowered to do so as per the terms of offer of appointment.

5. In the result, we see no merit in the O.A. and the same is liable to be dismissed. Accordingly, the O.A. is dismissed. There will be no order as to cost.


(P.P. SRIVASTAVA)
MEMBER (A).


(B. S. HEGDE)
MEMBER (J).

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