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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 614/91.

Shri Chandrakant Marne ... Applicant

Versus

Director General Of Ordnance Factory, Calcutta. ... Respondents.

CORAM :

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

2. Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCES :

1. Shri S. P. Saxena,
Counsel for the Applicant.

2. Shri P. M. Pradhan,
Counsel for the Respondents.

JUDGEMENT : DATED : 5.8.1994

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

1. The Applicant is a former employee of the Ammunition Factory at Kirkee, Pune and is aggrieved by the unlawful termination of his service and subsequent rejection of his statutory appeal.

2. In this application, he contends that he has been wrongly terminated by being treated as a probationer even though he stood confirmed in service immediately after the completion of the probation period. Since no notice or pay in lieu of notice was given to him at the time of his termination, the impugned termination is patently punitive in nature and therefore violative of Articles 14, 16 and 311(2) of the Constitution Of India. He is aggreived by the termination order dated 07.07.1987 as well as the order of the Appellate Authority dated 16.04.1991.

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3. The brief facts are that the Applicant was appointed as Orderly on probation for a period of two years in the scale of Rs. 196-232/-. He was given the first annual increment as on 01.02.1984. On 22.10.1984 the Applicant came to be transferred under Respondent No. 2 i.e. I.E. Ammunition Factory, Kirkee, as Orderly in the same scale of pay and thereafter the annual increment was granted to him as on 01.02.1985. It is stated that the probation period of two years was completed with no adverse remarks being communicated to the Applicant. It is contended that as per the provision of Ordnance Equipment Fact, Group 'C' and 'D' Non-Industrial Employees Recruitment Rules, the period of probation of Peon/Orderly is fixed at two years and ther is no provision of any extension therein. Neverthless, he has not been confirmed. On 01.02.1986, the annual increment was granted to him. Thereafter, on 28.02.1986 the Applicant was issued an Advisory Memo to wear uniform failing which disciplinary action would be taken. Accordingly, a memo was issued to him to which he replied stating that no uniform was issued to him by the Respondent No. 2. On 27.04.1986, the Respondent No. 2 issued an order for the first time extending the probation period retrospectively from 04.02.1985 to 30.09.1986 for a period of 8 months. However, in the meanwhile on 26.09.1986 a Show-cause notice was issued to him from Respondent No. 2 under rule 16 of CCS (CCA) Rules 1965. Though the probation period was extended by 01.10.1986, neither the probation nor the confirmation order was passed. Further on 16.12.1986, the Respondent No. 2 ordered with-holding of one annual increment without any enquiry, even though the Applicant had denied the charge of staying in the factory after shift hours unauthorisedly. The Applicant had completed four years of service as on 03.02.1987, the maximum probation period under the original probation letter issued by Respondent No. 3. On 09.05.1987 the Respondent No. 2 extended the

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period of probation from 01.04.1987 for a period of six months upto 30.09.1987. Neverthless, the Respondents vide Order dated 07.07.1987 received from Respondent No. 2, terminated his service stating that his service is no more required, against which he filed an appeal on 01.01.1987. When the appeal was pending before the Competent Authority, he filed an O.A. No. 386/88 before this Tribunal. The Tribunal vide its order dated 25.02.1991 disposed of the O.A. with the direction to the Respondents to decide the appeal within two months. The Appropriate Authority vide its order dated 16.04.1991 rejected the appeal. Pursuant to the rejection, the Applicant has filed this O.A. before this Tribunal stating that the impugned Order dated 07.07.1987 is arbitrary, unlawful and without jurisdiction and also seeking to quash the appellate order dated 16.04.1991 and seeking a direction to the Respondent to reinstate the Applicant with continuity of service, full back wages and all consequential benefits, etc.

4. The Respondents in their reply have stated that the reason for termination was unsatisfactory performance during his probation period. Accordingly, his probation period was extended from time to time. Since there was no improvement in the method of working, the Applicant's service was terminated with effect from 07.07.1987. They also contended that during the period of probation, he has been served with many warning memos for improvement in the work, which has been denied by the applicant and the Respondents have not filed any such memos except memo Dated 06.09.1983.

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performance was not satisfactory. If it was otherwise, the release of increment could have been interdicted on the ground that neither the work nor the conduct was satisfactory. He further submits that the Applicant came to be transferred under Respondent No. 2 on 22.10.1984 on permanent basis. As per rules of recruitment of Respondent No. 2 for Class 'C' and 'D' posts like Orderly/Peon, the probation period is only for two years without any provision for extension. The said probation period of two years had expired on 03.02.1985 and hence the Applicant ought to have acquired the status of permanent employee, especially, when there was no order extending the period of probation by the Respondent No.3 even when the applicant completed three years of probation on 03.02.1986, Reliance is placed on the Division Bench Judgement of Orissa High Court in the case of Bhawani Prasad Dash V/s. Arbitrator cum Director Of Textiles 1994 I CLR 785 and the Judgement of the High Court of Gujarat in the case of Dahyabhai Mangalpuri Gosai V/s. Cantonment Board Ahmedabad and Others 1994 I CLR 859. Reliance is also placed on the judgement ofthe Supreme Court in the case of State Of Punjab V/s. Dhersan Singh reported in AIR 1968 SC 1210 wherein the Supreme Court has held that where the probationary period is fixed and there is no provision for further extension, the probationer having been allowed to continue beyond the maximum period of probation without an express order of confirmation, he cannot be deemed to continue in that post as a probationer. Further, the Learned Counsel for the Applicant submits that the impugned order of termination if read as it is implies that the termination was by way of non-requirement of the applicant's service. This means that the applicant was surplus. Such a termination even while

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5. In this connection, it is relevant to quote the terms of appointment vide their letter dated 03.02.1983, which reads as follows :-

> "The appointment will be subject to the following conditions :-
>
> (a) The post is temporary.
>
> (b) You will be on probation for a period of two years from the date of your appointment as Orderly and if your performance is not satisfactory, your services are liable to be terminated without assigning any reasons or the period of probation extended at any time either before the expiry of the probation period or thereafter. Ordinarily the period of probation shall not be extended beyond four years i.e. double the period of probation. During the probationary period your services can be terminated without any notice on either and thereafter one month's notice will be required on either side for termination of services."

In the light of the above, the short question for consideration is whether the termination order passed by Respondent No. 2 is justified and in accordance with the relevant rules.

6. The Learned Counsel for the Applicant, in support of their contention has relied upon the decision of the Supreme Court in Ajit Singh and Others Etc. V/s. State Of Punjab and Another 1983-ILLJ-410 wherein the court has interpreted the expression "Period of probation" - Purpose and objective of period of probation. The Applicant has been granted annual increment for the year 1984, 1985 and 1986 during the period of probation. Keeping in view the ratio laid down in the Applicant's case, he submits that under such circumstances, it cannot be held that his

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on probation amounts to retrenchment as defined under the Industrial Disputes Act, 1947, and the condition precedent as laid down under Section 25 F of the said Act has not been followed. The impugned termination order is therefore required to be quashed and set aside on that ground. In support of his contention he relied upon the Supreme Court judgement in the case of Shri Mohanlal V/s. Bharat Electronics Limited 1981-II L.L.J. 70. Further, as per the original appointment order issued by the Respondent No. 3, the probation period was extended upto 30.09.1986 vide order dated 27.04.1986. From 01.10.1986 till 03.02.1987 there was no order of either confirmation of service or extension of probation period. In this connection, he draws our attention to Article 202 of C.S.R. (G.I.M.H. Affairs Memo No. F-82/52-Est. dated 08.10.1954 in para (viii) & (ix) where the procedure in respect of the probationer is stipulated and it is provided that the decision of confirmation or extension in the probationary period should be communicated within a period of 6 to 8 weeks after completion of the probationary period, and the probationary period cannot be extended beyond double the normal period. In the instant case, even the maximum period of 8 weeks expired at the end of March 1987 and the order of confirmation was not served. The applicant is therefore deemed to be confirmed as on 03.02.1987 even on the basis of original appointment order issued by Respondent No. 3.

7. As against this, the Respondents have relied upon the judgement of the Supremem Court in the case of Shri Kedarnath Bahl V/s. State Of Punjab in AIR 1972 SC 873. The Supreme Court has observed that where a person is appointed as a probationer in any

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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 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 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.

8. The Respondents also relied upon the decision of the Madras Bench of the Tribunal in the case of Dr. Dipti Rajan Mohapatra V/s. Director General, Ordnance Factories, Calcutta, wherein the Tribunal reiterated the ratio laid down in the Kedar Nath V/s. State Of Punjab and stated that even if there is satisfactory completion of probation, one may have to continue as a regular employee without any substantive status against any post, if he is not confirmed. That there is no automatic confirmation on the expiry of the probation period of two years has also been brought out in State Of Maharashtra Vs. V.R. Saboji reported in AIR 1980 S.C. 42.

9. We have heard the rival contentions of both the parties and perused the various decisions cited at the bar. Having given due consideration to the contentions of the respondents, we hold judgement cited by the Respondents are not applicable to the facts of the present case, because in that case

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the appellant was promoted on probation to a temporary sanctioned post and he was reverted when the post was discontinued. In that event, the appellant had challenged the order of reversion and not the order of termination. In the instant case, the Applicant was appointed through proper selection in the permanent post of Orderly/Peon, the facts of which case are totally different from the Kedarnath Bahl case. After analysis the various facts of this case, we find that in the Appointment letter it was made clear that he will be on probation for two years from the date of his appointment and if his performance is not satisfactory, his services are liable to be terminated without assigning any reasons or the period of probation extended at any time either before the expiry of probation period or therafter. Ordinarily, the period of probation shall not be extended beyond four years i.e. double the period of probation. That being the conditions of appointment, it is not open to the Respondents to extend the period of probation beyond four years without any justifiable cause. Even if they have found that his services are not satisfactory, it is not open to them to terminate his service after the expiry of the probation period at any time. Admittedly, before issuing the termination order, no show-cause notice was issued and nowhere it is shown that his services are far from satisfactory. None of the warnings or memos alleged to have issued except one case on record. On seeing that his services were not upto the mark, it is open to the Respondents to terminate his service by resorting to the temporary service rules giving one month's notice, which is not done in the instant case.

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The Learned Counsel for the Respondents had promised to supply the copy of general transfer order of officials working under Respondent No. 3 to Respondent No. 2 and terms and conditions pertaining to transfer within a week. The same has not been furnished even after two weeks. As stated earlier, if the Applicant was an employee of Respondent No. 2, his probation period is only for a period of two years and there was no provision for any extension under the rules. Even after taking for granted that he was an employee of Respondent No. 3, as per the terms of the appointment, his probation expires after the period of four years. Admittedly, his services are terminated beyond the probation period without any notice. In that view of the matter, the principle laid down in the case of State of U.P. & Anr. V/s. Kaushal Kishore Shukla JT 1991 (1) SC 108 would apply in the present case. In that case, it is observed that under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied whereupon the services of the temporary employee are terminated, no exception can be taken to such an order of termination. A temporary Government Servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary Government

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servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government Servant. If it decides to take punitive action it may hold formal inquiry by framing charges and giving opportunity under the protection of Article 311 (2) in the same manner as a permanent Government Servant. Very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order. It is also erroneous to hold that where a preliminary enquiry into allegations against a temporary Government Servant is held or where a disciplinary enquiry is held but dropped before the issue of order of termination, such order is necessarily punitive in nature.

10. The Respondents vide their letter dated 16.12.1986 with held one increment of the Applicant in his time scale for a period of one year without cumulative effect as and when it falls due. The Respondents without resorting to proper enquiry and after a lapse of six months, terminated his service with effect from 07.07.1987 stating that his services are no longer required in terms of para 2 (b) of his appointment order . As stated

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earlier, his appointment order is very clear that his probation period cannot be extended to more than four years and it is obvious that he has become surplus and therefore the Respondents terminated his service without following the due process of law.

11. In the light of the above, we are satisfied with the termination order issued by the Respondents vide dated 07.07.1987 is liable to be quashed and the same is quashed and set aside. Consequent thereupon, the respondents are hereby directed to reinstate the applicant in service in the post in which he was placed at the time of termination from service but without back wages. For regulating the intervening period, the competent authority may pass any orders in accordance with the law as may be deemed fit.

12. In the light of the above, the O.A. is allowed but with no order as to cost.

M.R.Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

B.S.Hegde

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

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

R.P. 69/95 in O.A. 614/91

Director General of Ordnance
Factory, Calcutta & Anr. ... Petitioners

v/s

Shri Chandrakant Marne ... Respondent

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)

2) Hon'ble Shri M.R. Kolhatkar, Member (A)

Tribunal's orders (by circulation) Date: 18.7.1995.
(Per: Hon'ble Shri B.S. Hegde, M(J)).

1. This Review Application has been filed by the Applicants seeking review of the judgement dated 5-8-1994 in O.A. 614/91 and we are satisfied that the R.A. can be disposed of by circulation. On perusal of the Review Application, we find that the judgement was delivered on 5-8-1994 which was received by the Applicants on 24-8-1994 and they have filed the Review Application on 18-10-1994 after a lapse of 22 days. The Petitioners have filed M.P. 506/95 seeking condonation of the delay on the ground that during the course of hearing the Tribunal had directed the Department to supply the copy of the general Transfer Order of the officials within a week. The same has not been furnished even after two weeks; accordingly, the Tribunal went ahead in pronouncing the order. The Petitioners now say that the order is ready and accordingly requested for review of the order.

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From pre-page:

2. It is well settled that a Review Petition cannot be filed by way of an appeal and has to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C. In connection with the limitations of the powers of the Court under Order 47, Rule 1 while dealing with similar jurisdiction available to High Court for seeking review of the orders under Art. 226, the Supreme Court in A.T. Sharma v/s H.P. Sharma A. 1979 SC 1079 has held that the power of review which includes in every Court of primary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definite limits to the exercise of powers of review. The powers of review may be exercised on the discovery of new important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground, but it cannot be exercised on the ground that the decision was erroneous on merits, that would be the power of a Court of Appeal. A power of review is not to be confined with appellate Court to correct all manners of errors committed by the subordinate Court.

3. On perusal of the Review Application, we find that no such new facts have been brought to our notice except stating that general transfer order issued by the Petitioners is enclosed which does not change the events and the decision rendered on the basis of facts available on record.

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From pre-page:

4. A perusal of the Review Application makes it clear that none of the ingredients referred to above have been made out to warrant review of the aforesaid judgement.

5. In the circumstances, we are of the opinion, that neither an error on the face of the record has been pointed out nor any new facts have been brought to our notice calling the review of the judgement. Accordingly, the Review Application is dismissed with no order as to costs.

(M.R. Kolhatkar)
Member (A)

(B.S. Hegde)
Member (J)

Copy to:-

The Director General of
Ordnance Factory, & Anr.,
through Mr. P.M. Pradhan, Adv.

2. Mr. Chandrakant Marne,
C/O. Mr. B.L. Nag, Adv.

SECTION OFFICER.

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18) 31.7.1995.

Shri B.L. Nag, counsel for the applicant.

Shri S.S. Karkera for Shri P.M. Pradhan, counsel for the respondents states that the Review Application No. 69/95 for review of the Judgement dated 5/8/1994 has been rejected by this Tribunal on 18/7/1995. He further states that the respondents have sent two letters to the applicant for joining his duty. He states that if the applicant is willing to join duty tomorrow at Ammunition Factory, Pune, he will be allowed to work. Shri Karkera states that necessary instructions would be issued to the respondents in this respect.

The applicant is therefore, directed to remain present at the place of his posting tomorrow.

With this direction, C.P. No. 80/95 is disposed of.

(P.P. Srivastava)
M(A)

(M.S. Deshpande)
Vice-Chairman.

31/7/95 os
order/Judgement dispatched
to the applicant/respondent (s)
on 2/8
7/8