

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. : 1253 of 1992.

Dated this Thursday, the 12th day of October, 2000.

Miss. Sarla Gordhandas Shah, Applicant.

Shri G. S. Walia, Advocate for the applicant.

VERSUS

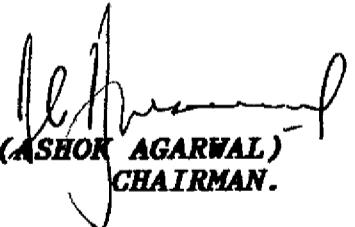
Union of India, Respondent.

Shri P. M. Pradhan, Advocate for Respondent.

CORAM : Hon'ble Shri Justice, Ashok Agarwal, Chairman.

Hon'ble Smt. Shanta Shastray, Member (A).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches No. of the Tribunal ?
- (iii) Library. Yes.


(ASHOK AGARWAL)
CHAIRMAN.

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CORAM : Hon'ble Shri Justice Ashok Agarwal, Chairman.

Hon'ble Smt. Shanta Shastri, Member (A).

Miss Sarla Gordhandas Shah,
Residing at -
2-A, Nirmal Apartment,
Vile Parle (West),
Bombay - 400 049.

... *Applicant.*

(By Advocate Shri G.S. Walia)

VERSUS

1. Union of India through
The Secretary,
Ministry of Law & Justice,
(Department of Legal Affairs),
Shastri Bhavan,
New Delhi - 110 001. ... *Respondents.*

(By Advocate Shri P. M. Pradhan)

OPEN COURT ORDER

PER : Shri Justice Ashok Agarwal, Chairman.

Applicant in the instant case, at the relevant time, was a Central Government Advocate, having been appointed as such by an order passed on 12.11.1976. By a subsequent order passed on 26.05.1982, she was promoted as Sr. Central Government Advocate. By a later order passed on 21.03.1985, she was reverted back to her substantive post of Central Government Advocate. By the present O.A., she impugnes the aforesaid order of reversion of 21.03.1985. She also impugnes an order issued on 10.12.1991 whereby her representation seeking to impugne the aforesaid order of reversion and for being reinstated back to her promotional post of Sr. Central Government Advocate has been rejected.

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2. As already stated, applicant came to be appointed as Central Government Advocate on 12.11.1976. By an order passed on 26.05.1982, she was promoted as Sr. Central Government Advocate. The order is at Exhibit 'B'.

3. By the impugned order passed on 21.03.1985, applicant has been reverted to her substantive post of Central Government Advocate. The order is at exhibit 'C'. The same inter-alia provides that applicant, officiating Senior Central Government Advocate, on probation, shall stand reverted to her substantive post of Central Government Advocate with immediate effect.

Disciplinary proceedings were initiated against the applicant by issue of a charge-sheet on 03.02.1987. The charge sheet contains the following Articles of Charge:-

ARTICLE-I

"Miss S.G. Shah, while functioning as the Central Government Advocate, during the period 1983-85 committed gross misconduct in as much as -that she demanded 50% cut in the fees payable to Shri D.H. Parekh and 15% cut in the fees payable to Shri V.J. Pandit, both Govt. panel Counsel, Bombay, in connection with allotment of briefs to them and thus indulged in corrupt practices in the matter of distribution of briefs to Government Counsel.

ARTICLE-II

That the appearance of Shri D.H. Parekh was shown in the Income-tax matter pending in the Bombay High Court before Justice Bharucha and Justice Kania on the instructions of Miss S.G. Shah, even without delivering the brief to Shri D.H. Parekh or intimating him about the same, which has resulted in calling for the explanation of Miss S.G. Shah by the High Court on 27.8.85. Thereafter she had handed over the briefs to Shri D.H. Parekh at his residence. Thus, Miss S.G. Shah failed to maintain absolute integrity and devotion to duty, required of a Government servant.



ARTICLE-III

That Miss S.G. Shah had failed to file an appeal in Writ Petition No.622 of 1983 in which the court granted five weeks time to obtain the Stay Order. This has resulted in the Party's getting release of an amount of Rs.39,00,000/- and a corresponding loss to the Government. This amount had been collected by the Bombay Customs Authorities as Custom Duty from M/s. Metal Distributors.

Miss S.G. Shah, the Central Government Advocate by her acts aforesaid has failed to maintain absolute integrity and devotion to duty and she acted in a manner which is unbecoming of a Government Servant and thereby contravened Rules 3(1)(i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964".

4. By an order passed on 05.02.1987, she was placed under suspension. By a later order passed on 21.04.1989 aforesaid order of suspension was revoked. By an order passed on 12.11.1991, she was exonerated of the aforesaid charges framed against her. Consequent upon her exoneration, on 13.11.1991, she was paid full salary and was treated as being on duty during the period of suspension. By a representation of 26.11.1991, she impugned the aforesaid order of reversion and prayed for being placed back in her promotional post of Sr. Central Govt. Advocate. By a communication of 10.12.1991, aforesaid representation has been rejected. Copy of the order is annexed at exhibit 'I'. As already stated, aforesaid order at exhibit 'C' and 'I' are impugned in the present O.A.

5. Shri G.S. Walia, the learned counsel appearing for and on behalf of the applicant in his characteristic vehemence has submitted that the impugned order of reversion has been issued by way of a penalty. The same has been issued on the grounds of imputations contained in the charge sheet issued on 3.2.1987. Aforesaid orders imposing the penalty of reversion could not be

issued without following the procedure provided by Article 311 of the Constitution. Aforesaid order which has been issued without notice and without affording the applicant, a reasonable opportunity of being heard is in contravention of the mandate contained in Article 311 of the Constitution and the same will, therefore, stand vitiated.

6. *Shri Walia by placing reliance on averments contained in the written statement submitted by and on behalf of the respondents where it has been averred that the order of reversion has been issued on account of applicant's overall performance being not satisfactory and she not having been found suitable to be continued in the said promotional post. Impugned order according to counsel, thus carries a stigma. The same could, therefore, not be issued without following the procedure mandated by Article 311 of the Constitution.*

7. *Shri Walia has lastly contended that the applicant had continued in her promotional post during the period 26.5.1982 and 21.3.1985. No indication of whatever nature was given during the aforesaid period of her unsatisfactory performance. No opportunity was thus afforded to her to improve her performance. In the circumstances respondents were not justified in straightaway issuing the order of reversion. For the aforesaid proposition, he has placed reliance on the case of Dr. Mrs. Sumati P. Shere Vs. Union of India and others, 1989 SCC (L&S) 471 and V.P. Ahuja Vs. State of Punjab & Ors., 2000(1) S.C. SLJ 272.*

8. *Shri P.M. Pradhan, the learned Government Counsel appearing on behalf of the respondents, countered by submitting*

that applicant was appointed on probation. Though the period of probation was for two years, with a liberty attached for extending the same, it does not come to an end at the expiry of the period of two years even if there is no formal order of extension. Applicant would continue to remain on probation till such time a specific order of ~~continuation of the same~~ ^{continuation} is issued in her favour. The services of the applicant on the promotional post on officiating basis can, therefore, justifiably be terminated and she can be reverted back to her substantive post if not found suitable to continue in the promotional post. For this proposition, Shri Pradhan has placed reliance on a decision of the Hyderabad Bench of this Tribunal in the case of A.S. Jeevarathnam v. Director, Regional Station for Forage, 1998 (6) SLR 450. According to Shri Pradhan the charge-sheet and the imputations contained therein have no relevance to the order of reversion. The order of reversion is based merely on the unsuitability of the applicant to hold the promotional post. The same does not cast a stigma as suggested on behalf of the applicant. The order in the circumstances is fully justified.

9. We have considered the rival contentions advanced before us and we find that the order of reversion is just and proper and does not call for interference.

10. The order of promotion dated 26.5.1982 at Exhibit 'B', inter alia, provides that the applicant has been appointed to officiate as Senior Central Government Advocate. The same further stipulates that she will be on probation for a period of 2 years with effect from the date she takes over the charge of the post.

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The probation period may be extended at the discretion of the appointing authority, if necessary. Her continuance in that post will be subject to the satisfactory completion of period of probation and availability of a vacancy in that post.

11. Two things are clearly indicated in the order of promotion. The same appoints the applicant to officiate in the promotional post. Her appointment is on probation for a period of 2 years. The period of probation can be extended and her continuance in the post is made subject to her satisfactorily completing the period of probation. Aforesaid appointment is, therefore, not a substantive appointment. The same is on officiating basis and on probation. In the circumstances, we have no hesitation in holding that the applicant will not be justified in seeking to impugn the order of reversion on the ground that the same amounts to a penalty or on the ground that the same casts a stigma upon her. As far as the order of reversion is concerned, the same is an order of reversion simplicitor. The same provides that the applicant who was officiating as Senior Central Government Advocate on probation shall stand reverted to her substantive post of Central Government Advocate. We do not find any aspersion cast upon the applicant. The same does not even remotely make any reference to the imputations contained in the charge sheet which was issued almost after a lapse of 2 years. We have already reproduced the imputations contained in the charge sheet. They are of grave and serious nature. Had the said imputations weighed with the respondents, surely they would not have rest^{ed} content by issuing an order of reversion and thereby continuining her in service. They would have proceeded to pass an order of termination. As far as respondents are



concerned, this is what has been stated in their written statement:-

"I say that the said order of reversion dated 21st March 1985 is not a reversion at all but infact when the applicant was promoted to the post of Senior Central Government Advocate with effect from 14th June, 1982, she was on probation and because of the fact that her overall performance was not satisfactory, she was not found suitable to be continued in the said post and, therefore, she was sent back to her substantive post which she was holding prior to her being promoted to the post of Senior Central Government Advocate on 14th June, 1982".

In our judgment, since the applicant was working on ad-hoc basis on the promotional post and was on probation, she could justifiably be reverted back to her substantive post.

12. As far as the case of Dr.Mrs. Sumati P. Shere (*supra*) relied upon by Shri Walia is concerned, the same in our view, will have no application to the facts of the present case. Aforesaid decision related to the appointment to the post of Assistant Surgeon Grade I in Naval Headquarters. The appointment was on ad-hoc basis for a period of 6 months or till a regular candidate from the Union Public Service Commission became available whichever was earlier. That appointment was a stop-gap arrangement pending regular candidate being made available from the Union Public Service Commission. Aforesaid appointment was against a substantive vacancy and was pending appointment of regular candidate. Orders were made from time to time continuing her in service. She had earned increments in the pay scale which was admissible to the post. It was, in thesecircumstances that her services were sought to be terminated even though a regular candidate selected by the Union Public Service Commission had not been made available to replace her. The Supreme Court in

paragraphs 6 & 7 has made a reference to the decisions of the same court in the cases of Champaklal Chimanlal Shah Vs. Union of India, AIR 1964 SC 1854 and Oil and Natural Gas Commission Vs. Dr. M. D. S. Iskender Ali, 1980 SCC (L&S) 446 and has found that there can be no dispute about the proposition that termination of a temporary Government Servant who was on probation on the ground that his work had not been satisfactory and he was not found suitable for being retained in the service does not attract Article 311 (2) of the Constitution. The Supreme Court in the aforesaid case of Dr. Mrs. Sumati P. Shere has further observed as under:-

".....We are not laying down the rule that there should be a regular enquiry in this case. All that we wish to state is that if she is to be discontinued it is proper and necessary that she should be told in advance that her work and performance are not up to the mark".

In our view, the aforesaid decision is a decision based on the facts arising in that case. The same does not lay down any proposition of law which can be said to be of a binding nature.

13. As far as the case of V.P. Ahuja (*supra*) is concerned, the order of termination impugned therein contained a clear stigma as the same provided as follows:-

".....However, he failed in the performance of his duties administratively & technically. Therefore, as per Clause-I of the said appointment order, the services of Shri V.P. Ahuja are hereby terminated with immediate effect".

That is not the case at hand. Aforesaid decision, in the circumstances can, therefore, have no application to the facts of the present case. ~~~

14. In the case of A.S.Jeevarathnam (supra), the Hyderabad Bench of this Tribunal has inter alia, held that mere expiry of the period of probation does not result in automatic confirmation ~~or promotion~~ of a probationer. Probationer continues to be a probationer until he is confirmed.

15. If an additional authority for the aforesaid preposition is required, the same can be ^{found} thus in the case of Dr. Amritlal Dharshibhai Jhankharia Vs. State of Gujarat and another, 1999

SCC (L&S) 280, wherein it has been observed as follows:-

"4. The appellant has challenged his termination from service. It has been contended by learned counsel for the appellant that after the appointment of the appellant by the resolution of 10.9.1970, he has completed two years of probationary period, hence he must be deemed to be confirmed. His termination on the basis that it was during the probationary period on account of his unsatisfactory work must, therefore, be set aside since he was not on probation on the date of the termination order. No material has been produced before us to show that the appellant was confirmed after the completion of probationary period or that there was any provision in the relevant rules applicable to his service which conferred automatic confirmation on completion of two year's probationary period. No such material was produced before the High Court either and the learned Single Judge of the High Court has observed in his judgment that from the record of the case, it is not possible to come to a conclusion that the appellant was holding a permanent post either on the basis of an order confirming him on the post which he was holding or by rules of the department or by any other provision of law. This judgment has been upheld by the Division Bench. We also do not have any material on record for coming to a conclusion that he had been confirmed in the post either by an express order or by virtue of any rule or by any other provision of law".

16. Once it is found that the applicant has continued to be on probation though no formal order of continuance of probation is passed, a conclusion is irresistible that her services can be terminated from the promotional post if she is found unsuitable to shoulder the responsibilities of the post. As already

indicated, the order is an order of termination / reversion simplicitor. The same does not cast any stigma. The same in the circumstances is just and proper and does not call for any interference in the present O.A., which is accordingly dismissed. No order as to costs.

Shanta Shastri
(SHANTA SHASTRY)
MEMBER(A)

Ashok Agarwal
(ASHOK AGARWAL)
CHAIRMAN

SNS