

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 672/95

Date of Decision: 5.7.1999

Nitin Vinayak Shinde

Applicant.

Shri A.I.Bhatkar

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri B.K.Shetty.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

Hon'ble Shri. D.S.Bawej, Member(A).

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

Reported
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 672/95.

, this the 5th day of July 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Nitin Vinayak Shinde,
26/406, Siddarth Nagar IV,
Atul Co-operative Housing Society,
Near Police Station,
Goregaon (West),
Bombay - 400 062. ...Applicant.
(By Advocate Shri A.I.Bhatkar)

Vs.

1. Union of India
through the Director General,
Coast Guard Headquarters,
National Stadium Complex,
New Delhi - 110 001.
2. Deputy Inspector General,
Coast Guard Region (West),
Sir Pochkhanwala Road,
Worli, Bombay - 400 018.
3. The Commanding Officer,
Coast Guard Air Station,
Daman, Nani Daman,
Daman - 396210. ...Respondents.
(By Advocate Shri R.K.Shetty)

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the learned counsel appearing on both sides.

2. The applicant came to be appointed as Fireman Gr.II by order dt. 15.2.1990 on probation for a period of two years. The applicant has been doing his work properly and satisfactorily, but the applicant received an order of termination dt. 17.8.1993

terminating his services with immediate effect. Being aggrieved by that order, the applicant preferred an appeal which came to be rejected by the Appellate Authority by order dt. 28.11.1994. Hence, the applicant has approached this Tribunal challenging the said orders.

The applicant's grievance is that no enquiry was held and action has been taken in violation of principles of natural justice. According to him when the appointment order mentions period of probation as two years, he must be deemed to have completed the period of probation satisfactorily after the completion of two years and it should be deemed confirmation in service. That no statutory notice of one month was given to the applicant. That no enquiry was held as provided under the CCS (CCA) Rules, 1965. The order of termination is also bad under CCS (Temporary Service) Rules since one month's notice was not given to the applicant. It is therefore, prayed that the order be quashed and the applicant be ordered to be reinstated with all consequential benefits.

3. The defence of the respondents is that during the period of probation the applicant had remained absent unauthorisedly and his work was not satisfactory. His probation period was once extended for a period of six months. Since the applicant did not complete the probationary period satisfactorily, his services came to be terminated. That CCS (Temporary Service) Rules are not applicable to the applicant. It is a simple case of simplicitor discharge of probationers for not completing the

probationary period satisfactorily and hence question of holding enquiry or issuing show cause notice or question of violation of principles of natural justice does not arise. There is no question of automatic confirmation after the expiry of probation period. It is therefore, stated that the applicant is not entitled to any of the reliefs prayed for.

4. The learned counsel for the applicant contended that when once the period of probation of two years comes to an end it should be a case of automatic confirmation of probation period and then there is no power to the authority to discharge the probationer or to terminate his services except following due process of law by holding enquiry under CCS(CCA) Rules. The learned counsel for the respondents, on the other hand, contended that since it is a case of simplicitor discharge of a probationer holding an enquiry does not arise and there is no question of automatic confirmation after the expiry of the probationary period.

5. The order of appointment is dt. 15.2.1990 which is at page 14 of the paper book. Para 2 clearly says that the applicant will be on probation for a period of two years and services could be terminated without notice during the period of probation. Then, para 4 provides that he will be allowed to continue in service only on completion of probation period satisfactorily and his services will be liable for termination by giving one month's notice.

There is no provision in the appointment order that on completion of two years probation period, there will be automatic confirmation. It is true that it also does not contain a provision that the probation period can be extended. But, if we read

para 2 along with para 4 there is no scope for the contention that it is a case of automatic confirmation on the expiry of two years, ^{but} and probation comes to an end only after completing the probation period satisfactorily as provided in para 4. It is not the applicant's case that he has received any order or certificate from the Competent Authority that he has completed the probation period satisfactorily. On the other hand, respondents have placed on record one document which is an order dt. 8.5.1992 issued by the Competent Authority. It consists of two part, the first part contains names of 25 officials who have been held to have completed the probation period satisfactorily and hence their names should be removed from list of probationary officers. The second part of the order pertains to 5 officials including the name of the applicant extending their period of probation by six months.

Therefore, this document gives us clear indication that there is no question of automatic confirmation on the expiry of probation period. On the other hand, it gives us a clear indication that probation period comes to an end only after satisfactory completion of the probation period and an order is passed to that effect by the Competent Authority. Further, the order clearly shows that in respect of applicant and four others probationary period was extended by six months. This also shows that the period of two years mentioned in the appointment order is subject to variation depending upon the completion of the period of probation satisfactorily by the official.

6. The learned counsel for the applicant has not produced any rule to show that probation period cannot be extended by the Competent Authority or to show that confirmation is automatic on

the expiry of period of probation. If the rules provide or the appointment order provides that on completion of probation period the authority has no right to extend the period of probation or on expiry of the probation period there must be automatic confirmation, then the matter will be different. In the absence of any such power, since the period of probation is concurrent with satisfactory completion of probationary period the Competent Authority will have inherent power to extend the period of probation if he finds that the work is not satisfactory.

7. Now, let us notice some of the decisions which were relied on by both sides.

In the case reported in 1998 SCC (L & S) 840 (Wasim Beg Vs. State of U.P. and Ors.), the question was whether completion of probation period culminates automatic confirmation. The Supreme Court observed that it depends upon the relevant rules. Then the Supreme Court pointed out three sets of cases. The first set of case is where the rules provide maximum period of probation beyond which probation cannot be extended and in such a case if maximum period of probation has been undergone by an official it must be necessarily end in automatic confirmation. The second set of case is where there is a provision for continuing probation period even beyond the maximum period of probation provided and in such a case there will be no deemed confirmation and the probation period will be deemed to be extended. In fact, the reference has been made in para 16 to an earlier case where the Supreme Court has held that even in a case where the rules provide that probation period should not exceed two years, still an order of confirmation was necessary and if a

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termination order is issued within the extended period of probation then it is valid. The third set of case is where the rules do not provide any maximum period for probation, in such a case till an order of confirmation is there, the period of probation is deemed to continue and there is no question of deemed or automatic confirmation.

In our view, the last rule applies to this case. The applicant has not produced any rule to show that there is a provision for maximum period of probation. Since no rules are brought before us about the power to extend probation, on reading two two clauses in the appointment order there is no difficulty to hold that period of probation should be initially for two years and he can be confirmed only after successful completion of probation period.

Then we have a latest decision of the Apex Court reported in 1999 SCC (L & S) 280 in the case of Dr. Amritlal Dharshibhai Jhankharia Vs. State of Gujarat and Another, where a similar question arose for consideration. The Apex Court has ruled that there is no question of automatic confirmation unless there is an order of satisfactory completion of probation period. That was also a case where a Doctor had been appointed on probation for a period of two years in 1970. Six years later, in 1976 his services came to be terminated as not satisfactory during the probation period. The Supreme Court observed that in the absence of any order of confirmation in service or a certificate that he has completed the probation period satisfactorily, there is no question of automatic confirmation on the completion of two years probation period.

That was a case where the order of termination was passed

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about six years after the official joined service. In the present case, the applicant was appointed in 1990 and there is an extension of probation period and in 1993 the order of termination/discharge is passed. Applying the same ratio to the facts of the present case there is no question of deemed confirmation or deemed completion of probation period unless there is an order to that effect by the Competent Authority that the official has satisfactorily completed the probation period.

Hence, in the present case, we hold that the applicant had not completed the probation period satisfactorily and there is no certificate to that effect by the Competent Authority and therefore he was on probation or deemed to continue on probation till the order of the Competent Authority and hence he was on probation even when the impugned order dt. 17.8.1993 came to be passed.

8. When once we reach the conclusion that applicant was on probation or deemed to be on probation, the question of holding enquiry under the CCS(CCA) Rules or issue of a termination order under the Temporary Service Rules does not arise. The appointment order itself provides that during probation period the services can be terminated without any notice. Therefore, this is an order passed by virtue of the condition in the appointment order. Though the order of termination says that the applicant has not improved his attendance and his work was not satisfactory during the period of probation it cannot and does not amount to stigma on the conduct of the applicant. The Competent Authority has to mention that the work is not

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satisfactory in order to exercise the power of termination during the period of probation. Hence, the question of holding enquiry under the CCS (CCA) Rules does not arise.

The learned counsel for the applicant placed reliance on a decision reported in 1999 SCC (L&S) 596 in the case of Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre For Basic Sciences, Calcutta and Ors., in support of his contention that if there is stigma in the termination order, then a regular enquiry has to be held. A perusal of the Judgment shows that in that case there were serious allegations of mis-conduct against the official including the allegation of preparing false bills, mis-behaviour with women staff members etc. Number of letters were issued to the official in that case. A perusal of the Judgment shows that since serious allegations of mis-conduct were alleged against the official and since no enquiry was held it was held it amounts to a termination due to mis-conduct and it cannot be done without holding enquiry. The Supreme Court has observed that the question whether it is a termination simplicitor or termination due to mis-conduct depends upon the facts and circumstances of the case. They took into consideration the order of termination along with three earlier letters issued to the applicant and thereby came to the conclusion that it is a case of termination due to mis-conduct and hence not sustainable in law without holding enquiry.

The learned counsel for the respondents invited our attention to a case reported in 1998 (II) LLJ 243 (Malik G.K. Vs. Hindustan Petroleum Corporation Ltd.), where Delhi High Court has held termination of a probationer on the basis of the terms of appointment letter based on unsatisfactory performance and

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mentioning some of his lapses does not amount to a termination by way of penalty. The said decision is directly applicable to the facts of the present case.

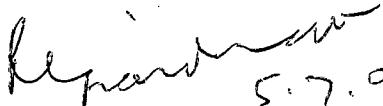
In the present case, the applicant was a probationer. He had remained absent for certain period. His work was found not satisfactory, hence the impugned order came to be passed. It cannot be called as an order which carries stigma on the applicant. Such an order is permissible under the terms of the order of appointment. Hence, we do not find any merit in the contention of the applicant's counsel that order of termination is bad for not holding an enquiry.

For the above reasons, we find no merit in the application.

9. In the result, the application fails and is hereby dismissed. No order as to costs.


(D.S. BAWEJA)

MEMBER (A)


(R.G. VAIDYANATHA)
5.7.99

VICE-CHAIRMAN

B.