

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
AT JAIPUR

Date of decision: 27-11-91.

T.A. No. 2108/86

Panna Lal

... Applicant

.Versus

Union of India

... Respondents

Shri U.D. Sharma

... Counsel for Respondents

CORAM:

THE HON' BLE SHRI GOPAL KRISHNA, MEMBER (JUDICIAL)

THE HON' BLE SHRI B.N. DHOUNDIYAL, ADM. MEMBER

SHRI GOPAL KRISHNA, MEMBER (JUDICIAL)

This is a Civil Appeal No. 98/81 instituted in the Court of District Judge, Kota against the judgment and decree dated 7.9.81 passed by the learned Munsif Kota City in Civil Suit No. 673/1974 which now stands transferred to this Tribunal under Section 29(iv) of the Administrative Tribunals Act, 1985 as TA 2108/86.

The facts of the case may be briefly stated as follows. The plaintiff-appellant was appointed a Telephone Operator on 17.12.1964 vide an order of the Divisional Engineer, Telegraphs, Ajmer Division, Ajmer dated 31.12.1964 against a post which was temporary but was likely to become permanent. In the event of its becoming permanent the plaintiff-appellant's claim for permanent absorption was to be considered in accordance with the rules in force. The main contention of the plaintiff appellant is that he was appointed as a telephone operator on probation for a period of one year and thereafter he should have been confirmed w.e.f. 1.3.1966. Some other persons recruited to the said post along with the plaintiff-appellant were



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confirmed against certain posts made permanent in February, 1967 and November, 1967. The plaintiff appellant was denied the benefit of confirmation in violation of statutory rules in an unjustifiable manner. As such he was constrained to serve a notice under section 80 of the Code of Civil Procedure upon the Union of India and on the expiry of the period of notice he had to file a Civil Suit but the learned Munsif and Judicial Magistrate, Kota North vide his judgment dated 7.9.89 dismissed the suit. Aggrieved by the dismissal of his suit, the plaintiff preferred an appeal in the Court of the learned District Judge, Kota.

The defendant respondent has resisted the claims of the plaintiff on the ground that the matter of his confirmation was considered along with other employees in the year 1968 and again in the year 1970 by the Departmental Promotion Committee but he was adjudged unsuitable for confirmation. It has been further contended on behalf of the defendant-respondent that the plaintiff's appointment was of a purely temporary character against a temporary post and he was actually not appointed against a substantive vacancy on probation. Even if it were to be assumed that the plaintiff was appointed on probation for one year he could not get the benefit of the provision of Rule 14 of Appendix 16 to the Posts and Telegraphs Manual, Vol. IV.

We have heard the parties and carefully perused the records.

The plaintiff sought his confirmation on the post of telephone operator w.e.f. 1.3.1966. The terms of his appointment are extracted below:

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- "(i) The post is temporary but is likely to become permanent. In the event of its becoming permanent his/her claims for permanent absorption will be considered in accordance with the rules in force.

OR

The appointment is temporary and will not confer any title to permanent employment.

- (ii) The appointment is purely provisional pending the issue of eligibility certificate in the candidates favour and shall stand cancelled in the event of such certificate being refused. The candidate is required to be given written undertaking in the form attached.
- (iii) The appointment may be terminated at any time by a month's notice given by the appointing authority without assigning any reasons. The appointing authority however reserves the right of terminating the services of the appointee forthwith or before the expiration of the stipulated period of notice by making payment to him of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.
- (iv) The appointment carries with it the liability to service in any part of the Ajmer Engineering Division and in special circumstances in any part of India. The appointee shall be liable for field service within India in times of war or National emergency.
- (v) Other conditions of service will be governed by the relevant rules and orders in force from time to time."



Our attention was drawn to rule 14 contained in Appendix 16 to the Posts and Telegraphs Manual Vol. IV which reads as follows:

"14. Appointment on probation - On the occurrence of a vacancy an outside candidate will be appointed on probation and a departmental candidate on an officiating basis for one year. At the end of this period the candidate will be confirmed if found suitable in every respect, subjects to his passing any departmental test that may be prescribed under the Rule in force at time. If during this period of his work or conduct is not satisfactory or if he fails to pass the test, an outside candidate will be liable to be removed from service without notice and a Telephone Operator recruited from among departmental candidates will be liable to revert to the appointment which he held before being appointed as a Telephone Operator.

A candidate will not be eligible to draw the next increment in the time scale of pay until he passes the departmental examination prescribed for the purpose."

The advantage of Rule 14 will accrue to the incumbent in the event of his appointment on probation against a vacancy and not otherwise. In this case the appointment of the plaintiff was obviously not made against a

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substantive vacancy but it was made on a temporary basis against a temporary vacancy. The vacancies against which the plaintiff is seeking confirmation were made permanent in February, 1967 and November, 1967. We agree with the findings of the learned Munsif that there was no violation of the provisions of Rule 14 and the Departmental Promotion Committee were within their rights to evaluate the performance of the candidates while considering their cases for confirmation.

The plaintiff relied on certain rulings which we have duly considered.* The plaintiff laid much stress upon the observations of Hon'ble Supreme Court in the case of State of Punjab V/s Dharam Singh reported in A.I.R. 1968 S.C. 1210 wherein it was observed that "Where, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation he cannot be deemed to continue in that post as a probationer by implication. The reason is that such an implication is negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication".



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- * 1. AIR 1967 SC 1889
 2. 1973 SLC 20
 3. AIR 1984 Punjab and Haryana 145
 4. 1972 SLR (Vol.VII) 94
 5. AIR 1968 SC 1210

The above case is clearly distinguishable as no maximum period of probation has been provided in the Rules applicable to the case of the plaintiff. Another case relied upon by the plaintiff namely Shankar Lal Mehta V/s Chief Engineer NF Railway and others reported in 1970 SLR 536 is also not of any help to the plaintiff as he was not appointed on probation against a substantive vacancy.

Another weakness in the plaintiff's case relates to the question of limitation. The cause of action for this suit had actually accrued to the plaintiff on 4.5.68 on which date the order for confirmation of some telephone operators was issued by the office of the Divisional Engineer, Telegraphs, Ajmer Division, Ajmer. The plaintiff's contention that due to the late receipt of the memo dated 29.12.70 Ex.3 by him on 10.11.71 he could not file the suit earlier is not convincing in view of his representation dated 20.12.71 Ex. 4 wherein he has mentioned that he was given a punishment of stoppage of increment for three years which was over in December, 1970. The plaintiff was evidently aware of the confirmation of some Telephone Operators who were appointed along with him. A suit for such a declaration ought to have been filed within a period of three years from the date on which the cause of action for it first arose as envisaged by Article 58 of the Limitation Act, 1963. The plaintiff was aggrieved by the letter of confirmation dated 4.5.68 and he should have filed a suit for declaration within a period of three years from 4.5.68. Under these circumstances we agree with the finding of the learned Munsif that on the date the suit was presented in his Court, it was barred by limitation.



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We accordingly dismiss the T.A. No. 2108/86 with
no order as to costs.



B.N. Dhoundiyal
(B.N. Dhoundiyal) 27/11/91
Adm. Member

Gopalkrishna
27-11-91
(Gopal Krishna)
Member (Judl.)