

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI Hyderabad

O.A. No. 397 of 1987, 198
T.A. No.

DATE OF DECISION 22/9/87

Mr. S. S. Budhan Petitioner
 Mrs. Basheeruddin Ahmed, Venkata Reddy & S. S. Budhan Reddy
 H. S. Basheeruddin Ahmed Advocate for the Petitioner(s)

Versus

Secretary to Govt of India, Deptt. of Respondent
 Personnel & Training and another
 Mr. K. Jagannatha Rao Advocate for the Respondent(s)
 Mr. M. P. Chandramouli

CORAM :

The Hon'ble Mr. B. N. Jayasimha, Vice Chairman

The Hon'ble Mr. D. Surya Rao, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? /
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? // Y
4. Whether it needs to be circulated to other Benches of the Tribunal? //

BNJ

VC

DSR
M(J)

ORDER OF THE TRIBUNAL

The applicant herein was a member of Indian Administrative Service. He challenges in this application the following orders:-

1. 14013/10/AIS(111) dated 8-6-87 contained in G.O.Rt.No.2135 dated 19-6-1987, Genl. Admn. (Spl.A) dept., Govt. of A.P., issued by the Secretary, Dept. of Personnel & Adm Training, Govt. of India and
2. G.O.Rt.No.2136 dated 19-6-1987 Genl. Admn. (Spl.A) Dept., issued by the Chief Secretary to Govt., Government of Andhra Pradesh.

2) Facts relating to the case are that the applicant was working as Selection Grade Deputy Collector in the A.P.Civil Service, Executive Branch when he was included in the select list for IAS in January 1979. In September 1979 he was regularly appointed to the cadre post by a notification dated 26-9-1979 and was placed on probation. Since then he had worked in several capacities like Deputy Commissioner, Commercial Taxes ; Project Director, DRDA ; Secretary, Hyderabad Urban Development Authority ; Deputy Secretary to Government, Energy, Environment, Science & Technology Department ; Deputy Secretary to Government, Irrigation Department ; Special Collector, Nizamabad Sagar & Srisailam Project and Secretary to Commissioner, Survey Settlement & Land Records, Hyderabad. He has been given year of allotment

35

in 1974 vide G.O.Rt.No.2300 dated 6-6-1986. His present status is that of Joint Secretary to Government of Andhra Pradesh. While this being so, the Department of Personnel & Administrative Reforms, New Delhi in their letter No.14012/10/84-AIS(III) dated 22-12-1986 informed him that they propose to revert him from the Indian Administrative Service under Clause (b) and (d) of Rule 12 of Indian Administrative Service (Probation) Rules, 1954. The applicant submitted his representation against this show cause notice. The final order was thereafter passed in G.O.Rt.No.2135 dated 19-6-1987 reverting the applicant to the state service.

3. The applicant contends that the Indian Administrative Service (Probation) Rules 1954 provides ~~the period for promotees~~ ^{that is part of probation} the probation of a ~~as~~ one year. As per sub rule 3(b) of Rule-3 of the said rules, a person recruited under Indian Administrative Service (Appointment by promotion) Regulation, 1956 shall not ordinarily exceed two years. The applicant states that no adverse remarks were communicated to him during probation period nor his probation period was extended at any time during ¹⁶ ~~8~~ years ^{he has been working} in the IAS cadre. He therefore questions ¹⁶ ~~orders~~ terminating his probation and reverting him to the State Civil Service of Andhra Pradesh as illegal, unconstitutional and malafide.

4. No counter has been filed by the Central Government or by the State Government although we have adjourned the case several times. We have heard the learned Counsel for the applicant. The learned Counsel for the applicant has relied upon a decision of the Gujarat High Court in 1972 SLR 619, A.C.Bhargav vs. Union of India. In that case a directly recruited officer of the Indian Police Service was terminated under Rule-12 of the Indian Police Service (Probation) Rules 1954. The officer was deemed to have been confirmed automatically after expiry of a period of 4 years and the termination simplicitor after the expiry of the period of probation was held illegal. The single Judge also relied upon the circular instructions of Government of India in coming to the conclusion. He therefore contends that the order of reversion of the applicant to the State service after a lapse of 8 years is illegal and the rules do not provide for such an action.

5. The short point for consideration is whether under the Indian Administrative Services (Probation) Regulations, 1954 the termination of the probation of the applicant is valid. We have considered the contentions raised by the Counsel for the applicant despite the respondents not filing a counter as the matter involved in only a question of law. Shri Parameswara Rao

representing Mr. K.Jagannatha Rao, Standing Counsel for the Central Government sought to contend that the confirmation of a probationer after completion of the period of probation is not automatic but is to be followed by formal orders as per Government of India letter No.16/3/65-AIS(I) dated 14-7-1965. He also relies on AIR 1962 SC 1711. That was a case dealing with the termination of a probationary extra Assistant Commissioner and his reversion to the substantive post of Tahsildar. He was governed by the Punjab Civil Services (Executive Branch) Rules 1930 and instructions issued by the State Government relating to such officers. In the present case the applicant is governed by the I.A.S.(Probation) Regulations and the Government of India regulations thereon. In this case no instruction similar to what has been issued in regard to All India Service Officers came up for consideration. We find that the case of State of G'jarat vs. A.C.Bhargav (1972 SLR 619) was taken in an appeal preferred by the Government of Gujarat and the Union Government and the Supreme Court while dealing with the said case in 1987(2) SCALE Page-428 (State of G'jarat vs. A.C.Bhargav and others held as follows :-

" 4. Reliance has been placed on a series of decisions of this Court while have held that an order of confirmation has to be made and confirmation would not follow automatically. The position here, however, is somewhat different.

5. While the Probation Rules prescribed an initial period of two years of probation it did not provide any optimum period of probation. Administrative instructions were issued by the Ministry of Home Affairs, Government of India on 16th March, 1973, indicating the guidelines to be followed in the matter. The relevant portion thereof may be extracted:

"....

(ii) It is not desirable that a member of the service should be kept on probation for years as happens occasionally at present. Save for exceptional reasons, the period of probation should not, therefore, be extended by more than one year and no member of the service should, by convention, be kept on probation for more than double the normal period i.e. four years. Accordingly a probationer, who does not complete the probationers' final examination of within a period of four years, should ordinarily be discharged from the service."

6. It is not disputed that the circular of the Home Ministry was with reference to the Indian Police Service (Probation) Rules. We have not been shown that these instructions run counter to the rules. It is well settled that within the limits of executive powers under the Constitutional Scheme, it is open to the

appropriate Government to issue instructions to cover the gap where there be any vacuum or lacuna. Since instructions do not run counter to the rules in existence, the validity of the instructions cannot be disputed. Reliance has been placed in the courts below on the constitution Bench Judgment of this Court and which reported in 1968 (1) SCR 111 (Sant Ram Sharma vs. State of Rajasthan and another) where Ramaswami J. speaking for the Court stated thus:

"....We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle or promotion of junior or senior grade officers to selection ~~maxx~~ grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principles to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rule already framed."

7. We are of the view that the rules read with instructions create a situation as arose for consideration by this Court in the case of State of Punjab vs. Dharam Singh (1968(3) SCR 1). The Constitution Bench of this Court in that case interpreted the Punjab Educational Service (Provincialised Cadre) Class-III Rules and found that there was a maximum limit of three years beyond which the period of probation could not be extended. When an officer appointed initially on probation was found to be continuing in service ~~x~~ beyond three years without a written order of confirmation, this Court held that it tantamounts to confirmation. The view of what we have stated above we are in agreement with the High Court about the combined effect of the rules and instructions. We hold that the respondent stood confirmed in the cadre on the relevant date when he was discharged. For a confirmed officer in the cadre, the Probation Rules did not apply and therefore, proceedings in accordance with law, were necessary to terminate service. That exactly was the ratio of the decision in Moti Ram Deka etc. vs. General Manager, N.E.F. Railways, Maligaon, Pandu etc. (1964(5) SCR 88 83). On the analysis indicated above, the net result, therefore, is that the respondent No.1 had become a confirmed officer

of the Gujarat I.P.S. cadre and under Rule 12(bb) of the Probation Rules his services could not be brought to an end by the impugned order of discharge. "

6. We have considered the present application in the light of the observations of the Supreme Court referred to above. We find that the instructions exactly similarly to the one quoted in the judgment have also been issued in regard to the I.A.S. vide Department of Personnel's letter No.22/371-AS-III dated 1-7-72. In these circumstances the decision rendered by the Supreme Court in State of Gujarat vs. A.C.Bhargav is directly applicable in the present case. As held by the Supreme Court the applicant stood confirmed in the cadre on the relevant date when he was discharged. For a confirmed officer in the cadre, the probation rules would not apply and therefore, proceedings in accordance with the law were necessary to terminate his service. In the result the impugned notification of the Government of India Notification No.14013/10/84-AIS(III) dated 5-6-1987 communicated through G.O.Rt.No.2135 dated 19-6-1987 and the consequential order G.O.Rt.No.2136 dated 19-6-1987 issued by the State Government are set aside. The application is accordingly allowed. There will be no order as to costs.

B.N.Jayasimha
(B.N.JAYASIMHA)
Vice Chairman

D.Surya Rao
(D.SURYA RAO)
Member(J)

Dated: September 22, 1987.