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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

C.A. 485/95.

Dt. of Decision : 5-6-96

D.V.V.Nagendra Prasad

... Applicant.

Vs

1. The Secretary, Commercial Audit
@ Wing, O/e the Comptroller of
Auditor General of India,
No.10, Bahadurza Jaffer Marg,
New Delhi-110 010.
2. The Principal Director of Commercial
Audit and ex-officio Member Audit Board
No.II, 3rd, Floor, Ilace House
Sir P.M.Road, Bombay-400 001. .. Respondents.

Counsel for the Applicant : Mr. K. Bathi Reddy

Counsel for the Respondents : (Smt. Sakthi for
Mr. G. Parameswara Rao
SC for IA & AD.

CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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O.A. 485/95.

ORDER

Oral Order(Per Hon'ble Shri R.Rangarajan, Member(Admn.) I

The applicant in this OA was selected and appointed as Section Officer (Commercial) on probation in the Indian Audit and Accounts Department vide memo No.841/AO(A)/126-83 dated 25-03-83. As per this memo the period of probation will be for two years. However this period may be increased or decreased at the discretion of the competent authority. The applicant underwent the departmental test held in June 1984 and ~~the~~ he was declared to have passed the departmental test successively as can be seen from the order No.B.13.6/SAS Exam/1984 dated 18-09-84. He was further promoted as Assistant Audit Officer in terms of letter No.A/12(33)/2542 dated 3rd February, 1988. Thus the applicant who was appointed as Section Officer after having passed the requisite departmental test was also promoted as Assistant Audit Officer subsequently. The applicant resigned on 25-02-1991. He submitted representation for payment of gratuity and balance insurance amount. But it is stated that no reply was given to his representation.

2. This OA is filed praying for a declaration that the action of the respondents in not paying him the gratuity and balance of insurance amount with 24% interest to the applicant for more than 4 years is illegal and void and consequently direct the respondents 1 and 2 to pay the gratuity and balance insurance amount with interest.

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3. The applicant had been paid Rs.2476/- as Insurance amount. But the applicant claims a further sum of Rs.800/- yet to be paid to him ~~on that amount~~ ^{account}. In my order dt.19-3-96 I had held that the balance amount being small, the applicant may pursue his case through the departmental authority for getting the balance amount if due by filing a suitable representation. In view of the above no adjudication is required in regard to the balance amount of Rs.800/- to be paid to the applicant. The applicant is free to file a representation for realising the residual amount to the concerned authorities.

4. The next relief is in regard to the payment of gratuity for the number of years of service he had put in the department under Respondents 1 and 2. The main contention of the respondents ~~is~~ ^{for} not paying him the gratuity is for the reason that he is not confirmed in any of the post in the department. From the facts of this case it is evident that the applicant had no blemish during the probation period. No letter, issued by the controlling authority of the applicant questioning his suitability to continue in the post of Section Officer during the probation period, has been brought to my notice. It is also seen that the applicant had passed the departmental test in the first attempt itself. He had also been promoted to the higher grade. In view of the above, it has to be held that the applicant had completed his probation period successfully. Reasons are not explicit for non declaration of his probation.

5. The learned ~~standing~~ counsel submits that his case was considered for declaration of the probation by the DPC which held its meeting on 31-01-92 and that DPC did not consider it necessary to confirm the officers who left the service on personal grounds prior to that date. It is the case of the respondents that as the applicant had left the service

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grounds, the recommendation of the committee on the ground of his absence on the day of meeting of the DPC is in order.

6. The DPC for confirmation has to meet immediately after the probation period is over to consider the cases of the employees for declaration of the probation. The committee has to see whether the employee was available in that post on the date when he completed his probation and not on any other arbitrary date. The date of meeting of the DPC has no significance. It has no meaning if the committee considers the absence of the employee on the date of meeting of the DPC after a lapse of many years for declaring the probation of the employees who had completed the probation very much earlier to the date of meeting of the DPC. In this case the applicant was very much in service when he had completed two years of probation. Hence rejection of the case of the applicant for confirmation on the ground that the applicant was not in service on the date of meeting of the DPC is not tenable. In view of this, the reason given by the DPC for not confirming the applicant by the DPC has to be held as void. As the applicant was available at the time of completion of probation after two years of his joining as Section Officer, as there were no adverse remarks against his working during that period, as he had passed departmental test in the first instant itself and also he had been promoted subsequently to higher post, I see no reason for not declaring his probation immediately after the two years period is over and granting him the confirmed status from that date.

7. Further a circular was issued by the Comptroller and Auditor General of India vide circular No.N/56/1988 No.2536-N.G.E.III/43-88 dated 20-07-88 wherein para 3.4 is relevant. This para reads as below:-

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"PENSION"

"Since all the persons who complete probation in the first appointment will be declared as permanent the present distinction between permanent and temporary employee for grant of pension and other pensionary benefits will cease to exist."

From the above circular it is clear that the persons who completed probation successfully will be declared permanent in their first appointment as there is no distinction between permanent and temporary employees for grant of pension and other pensionary benefits. The applicant was also in service on the date when the above circular dated 20-07-88 was issued. In view of what is stated above the applicant herein should be deemed to have completed his probation successfully and also deemed to be confirmed for the date of completion of probation and is eligible for pension and other pensionary benefits as and when it arises.

8. The learned counsel for the respondents submitted that as per letter dated 23-04-96, it is clarified that the applicant herein is not entitled for gratuity as he is not confirmed and he is also resigned on personal grounds. But for reason stated above the confirmation has to be considered on the date of completion of the probation. As on the date of completion of the probation he was available in service, he should have deemed to have been confirmed from the date. But his case has to be considered for granting of gratuity and other pensionary benefits in accordance with rules. The present OA does not contain prayer for any other relief other than granting him gratuity on the basis that he had completed his probation satisfactorily. In view of the above there is no need to consider any other grounds in this connection. The applicant has to be granted the pension and pensionary benefits in accordance with rules deeming him as a confirmed employee from the date he completed probation.

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9. In the result, the following direction is given:-

The probation of the applicant herein should be deemed to have been declared from the date he completed probation period of two years and also deemed to have been confirmed in that post from that date. His case for payment of gratuity should be considered in accordance with rules treating him as a permanent employee from the date of completion of his two years probation period from the date of his joining as Section Officer (Commercial).

10. The CA is ordered accordingly. No costs.



(R. Rangarajan)
Member(Admn.)


D.Y. Rajaratnam (3) 1996

Dated : The 5th June 1996.
(Dictated in Open Court.)

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Copy to:-

1. The Secretary, Commercial Audit Wing, O/O The Comptroller of Auditor General of India, No.10, Bahadursajaffer Marg, New Delhi.
2. The Principal Director of Commercial Audit and Ex- Officio Member Audit Board No.II, 3rd floor, Ilaco House, Sir P.M. road, Bombay.
3. One copy to Sri. K.Bathi Reddy, advocate, CAT, Hyd.
4. One copy to Sri. G.Parmeswara Rao, SC for IA & AD, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

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DA-485/95

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : MCA

DATED: 5/6/96

ORDER/JUDGEMENT

M.A. NO/R.A/C.A. NO.

B.A. NO.

IN
485/95

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDERS AS TO COSTS

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