

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

original Application No. 366 of 2002

Jabalpur, this the 15<sup>th</sup> day of September, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Judicial Member

Sourabh Agarwal, Ex-Chargeman  
Grade.II (T), Date of birth 5th  
August, 1974, S/o. Shri S.C. Agarwal,  
R/o. Bungalow No. V/28/N, West Land,  
Ordnance Factory, Khamariya, Jabalpur. ... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India, through its  
Secretary, Ministry of Defence,  
New Delhi.
2. The Chairman/DGOF, Ordnance  
Factories Board, 10-A Shahid Khudi Ram  
Bose Marg, Kolkata.
3. The General Manager,  
Ordnance Factory, Varangaon,  
Teh. Bhusawal, Distt. Jalgaon. ... Respondents

(By Advocate - Shri K.N. Pethia)

O R D E R

By Madan Mohan, Judicial Member -

By filing this original Application the applicant  
has claimed the following main reliefs :

"(ii) command the respondent No. 2 to decide the  
applicant's appeal/representation dated 25.1.2002  
Annexure A-4 within a stipulated time by a speaking  
order,

(iii) in the event, the applicant grievances are not  
remedied departmentally and the outcome of the  
appeal does not satisfy him he be given liberty to  
assail the outcome in accordance with the law,

(iA) set aside the termination order dated 29.12.01  
Annexure A-3 and also the appellate order dated  
20.6.2002 Annexure A-6 consequently command the  
respondents to reinstate the applicant with back  
wages and other consequential benefits as if the  
impugned order is never passed. Applicant is willing  
to join any Factory in the OF organization nation  
wide."

2. The brief facts of the case are that the applicant  
possesses the degree of B.Sc and was eligible for the



post of Chargeman Grade-II in the Ordnance Factory organisation. Pursuant to an advertisement, the applicant was appointed to the aforesaid post. The applicant was issued an appointment order and he joined the said post on 19.2.1998 in the respondent No. 3 factory. The applicant is a permanent resident of Jabalpur and his father is presently working as Junior Works Manager in Ordnance Factory, Khamariya, Jabalpur. The applicant's appointment was in consonance of the SRO 13(E) which prescribes 2 years as maximum period for probation for direct recruits. He completed his two years probation on 19.2.2000. During the said period no adverse CR was ever communicated to him and to the best of his knowledge his service record for the said period is good or very good. An order dated 30.12.2000 was served on the applicant. In this order it is mentioned that vide orders dated 19.4.2000 and 12.8.00 his probationary period was extended by the respondents for two occasion. The letters mentioned in order dated 30.12.2000 were not served on the applicant. It is a settled legal position that while extending probationary period, the purpose is to provide an opportunity to the probationer to improve upon the overcome from the shortcomings (if any). The applicant preferred a representation dated 3.2.2001 (Annexure A-2) praying for providing him the reasons for extension of probation period. No reply was given to him on this representation. The applicant was shocked when he was confronted with the order dated 29.12.2001, whereby his service stood terminated w.e.f. 29.12.2001. It is also a settled legal position that when rule prescribes a maximum period of probation and if the employee is permitted to cross the maximum period so prescribed in Rule 9, then he automatically acquires the status of a confirmed employee. The



respondents have no authority and competence to terminate the services of the applicant after 19.2.2000 when he acquired the status of permanent employee by treating him to be probationer. Feeling aggrieved by the termination order the applicant preferred a detailed representation/appeal on 25.1.2002 (Annexure A-4). During the pendency of the OA vide order dated 20.6.2002 (Annexure A-6). No reasons have been mentioned in this order. The applicant's termination is based on extraneous consideration and is not based on material on record. The termination order is arbitrary, unjust, unreasonable, unfair and malicious in nature.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicant that he succeeded in the written examination and interview held for the said post and after carrying out all legal formalities the appointment order was issued by the respondents and the applicant joined the service on 19.2.1998. The maximum period of probation is of two years. The applicant completed this period satisfactorily and it was completed on 19.2.2000. During this period no adverse CR was ever communicated to him and no information was given to the applicant for extending his period of probation as alleged by the respondents. If the period of probation is extended by the respondents for two times, then the respondents were legally bound to inform the applicant about it. The respondents should also inform the applicant about his shortcomings during the period of probation so that he can remove the same. The respondents have terminated the services of the applicant after the maximum prescribed period of probation of two years. The applicant legally and



automatically acquired the status of a confirmed employee of his after the completion of two years probation period. He cannot be deemed to be a probationer after 19.2.2000. His appeal against the order of the disciplinary authority terminating his service was also rejected without assigning any reasons.

5. In reply the learned counsel for the respondents argued that the services of the applicant was dispensed with during the extended period of probation. The service record of the applicant was not found satisfactory and his probation period was extended and finally he was terminated from services because there was no improvement in his performance. The applicant in his representation dated 3.2.2001 has stated that he was not informed of any adverse remark and he had admitted and assured through the said representation that he would try his level best to improve his performance. This representation also reveals that the applicant was informed from time to time about his bad performance. There is no question of providing the applicant the reasons for extension of probation period because he was already aware of the reasons for extension of probationary period. In this representation he also made a request to consider his case sympathetically and favourably. The applicant was very well aware of the fact and consequences of extension of probationary period and its effects. He was informed about this on many occasions by his superiors verbally and advised by him to improve his performance, but in vain. A Government servant is confirmed or declared permanent on the post on which he was recruited on his satisfactory completion of probationary period and after completion of other formalities also which are required to be fulfilled by such Government servant. There is no provision for automatic or deemed



confirmation. The termination order is passed strictly in terms of the extant rules and law. No irregularity or illegality is committed by the respondents in passing the impugned orders.

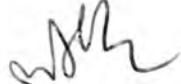
6. After hearing the learned counsel for both the parties and on careful perusal of the records, we find that the respondents have issued several confidential letters and orders to the applicant from time to time which are Annexure R-1 dated 24.4.2000, Annexure R-2 dated 6.7.2001 and Annexure R-3 dated 13.9.1999. We find that the arguments advanced on behalf of the respondents about the representation of the applicant dated 3.2.2001 regarding his assurance and admission that he will try his level best to improve his performance and also that his case be considered sympathetically and favourably, is correct. The letter dated 3.2.2001 further reveals that the applicant again requested that his probation period may not be extended further since he always remains under fear and tension due to extension of probationary period twice and he is very much demoralised. The applicant was aware of the reasons for his extension of probation period. The applicant was given several opportunities to improve himself but his performance was not found satisfactory. A Government servant is confirmed or declared permanent on the post on which he was recruited, on his satisfactory completion of probationary period and after completion of other formalities also which are required to be fulfilled by such Government servant. There is no provision for automatic or deemed confirmation. The services of the applicant were terminated during the extended period of probation and before its expiry in terms of the extant instructions. We perused the impugned order dated 29.12.01



(Annexure A-3) by which the services of the applicant was terminated during the extended period of probation on the ground of unsatisfactory performance of the applicant during the extended period of probation. We also perused the appellate order dated 20.6.2002. Both these orders and speaking and reasoned orders. The Hon'ble Supreme Court in the case of Shailaja Shivajirao Patil Vs. President, Hon'ble Khasdar Ugs Sanstha and others, 2003 SCC (L&S) 763 has held that "Termination - punitive or simpliciter - appellant appointed in a school for two years on probation - her services terminated during probation period - Termination letter indicating that her services were no longer required but there was also a mention that she was warned in writing about certain drawbacks in her work, and that such acts were not beneficial to the employer - Termination order assailed on the ground that it was penal and stigmatory in nature and that it was issued without holding any enquiry or giving the notice to the applicant - All/pleas turned down observing that appointment letter itself indicated tenure of appointment which could be terminated at any time without notice - Probation/Probationer - Termination of Service - Appointment - Tenure appointment - Departmental enquiry."

7. In view of the aforesaid, we are of the considered opinion that the applicant has failed to prove his case and this Original Application is liable to be dismissed as having no merits. Accordingly, the OA is dismissed. No costs.

  
(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman