

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

APPLICATION NO.: 465/2009

Applicant (S)

Advocate for Applicant (S)

Respondent (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p><u>02/04/2014</u> <u>O.A. No. 465/2009</u></p> <p>Mr. R.P. Sharma, counsel for the applicant. Mr. Hawa Singh, counsel for the respondents.</p> <p>Heard the learned counsel for the parties.</p> <p><u>Order Reserved.</u></p> <p><u>M. Nayyar</u> (M. Nayyar) Member (J)</p> <p><u>Anil Kumar</u> (Anil Kumar) Member (A)</p>

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 465/2009

Order Reserved on: 03/04/2014
Order pronounced on: १५./४/2014

Coram:

Hon'ble Mr. Anil Kumar, Administrative Member
Hon'ble Mr. M. Nagarajan, Judicial Member

Smt. Vanmala Rajesh Bhagat wife of Amol Mendhe, age 37 years, permanent resident of Benoda, Post Shirpur, Tehsil Arvi, District Wardha (Maharashtra)

....Applicant

Mr. R.P. Sharma, counsel for the applicant.

VERSUS

1. Navoday Vidyalaya Samiti through Principal Secretary (Joint Commissioner, Adm.), Administrative Building, A-28, Kailash Colony, New Delhi.
2. Commissioner, Navoday Vidyalaya Samiti, A-28, Kailash Colony, New Delhi.
3. Deputy Commissioner, Navoday Vidyalaya Samiti, (Regional Office), 18, Sangram Colony, Mahaveer Marg, C-scheme, Jaipur.
4. Shri Ramcharan Dhingra, Principal, Jawahar Navodaya Vidyalaya, Khairabad (Kota).

....Respondents

Mr. Hawa Singh, Counsel for the respondents.

ORDER (ORAL)

Per : Hon'ble Mr. M. Nagarajan, Judicial Member.

The applicant has presented this O.A. with a prayer to quash the impugned order dated 30-06-2008/02-07-2008, 03-07-2008 and 17-10-2008 and for a direction to reinstate

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her into service and provide all consequential benefits attached to the post of Female Staff Nurse.

2. The facts stated by the applicant in support of her prayer in brief are that she belongs to a schedule caste community. By a order dated 17/18-06-2004 (Annexure A/6) she was appointed to the post of Female Staff Nurse under the Navodaya Vidyalaya Samiti. In pursuance of the said order of appointment, she reported for duty on 08/07/2004 at Jawahar Novodaya Vidyalaya at Kalaindri (Sirohi), subsequently, she requested for transfer and accordingly she was transferred to the Jawahar Novodaya Vidyalaya, Tilwasani (Jodhpur) vide order dated 07-10-2004. In pursuance of the order dated 07-10-2004 she joined at Jawahar Novodaya Vidyalaya, Tilwasani (Jodhpur). Thereafter, she requested for transfer on account of education of her son to Jawahar Novodaya Vidyalaya, Khairabad, Kota and vide order dated 23-08-2006, she was relieved and in pursuance of said order dated 23-08-2006 she reported on 11-09-2006. The applicant claims that since from the date of entry in to service till the date of issue of the impugned order dated 30-06-2008/02-07-2008 under which her services were terminated, she was working with all the devotion to duties. The applicant in the O.A. has averred that respondent No. 4 namely Shri Ramcharan Dhingra, Principal, Jawahar Novodaya Vidyalaya, Khairabad,

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Kota had become inimical towards her on account of the fact that she did not yield to all the irregularities done by him. She claims that on account of the inimical approach of the respondent No. 4 to her, he was in the habit of issuing of memo to her and some of them were suitably replied and some of them were not replied. Further allegation against the respondent No. 4 is that he was in the habit of doing work in his fashion, but did not like the working style of the applicant. She further alleges that the adolescence sex education programme was not organized properly by the respondent No. 4 and as such she refused to sign and certify which caused annoyance of the respondent No. 4 and as a result of which, he started harassing her. While working at Jawahar Novodaya Vidyalaya, Khairabad, Kota by the order dated 30-06-2008/02-07-2008, Deputy Commissioner, Novodaya Vidyalaya, Jaipur terminated her from service. Consequent upon the termination order dated 30-06-2008/02-07-2008, the Principal, Jawahar Novodaya Vidyalaya, Khairabad, Kota issued a memorandum to dated 03-07-2008 directing her to vacate staff quarter. Feeling aggrieved by the said order of termination, she made a representation to the Minister of H.R.D including Commissioner Novodaya Vidyalaya Samiti on 10-07-2008 and requested to set aside the termination, but the request made by her in representation dated 10-07-2008 resulted in vain and consequently she approached this Tribunal in

O.A. No. 275/2008 with a prayer to set aside the order of termination and this Tribunal by order dated 25-07-2008 directed the respondent No. 2 to decide the representation of the applicant and to pass appropriate order in accordance with law. In compliance of order dated 25-07-2008 passed by this Tribunal in O.A. No. 275/2008, the respondent No. 2 rejected the request of the applicant vide order dated 17/10/2008. Being aggrieved by the order dated 17/10/2008, she presented this O.A. with a prayer to set aside order of termination dated 30-06-2008/02-07-2008, the order dated 03-07-2008 under which she was directed to vacate the staff quarter and the order dated 17-10-2008 under which her request for setting aside the order of termination and to reinstate her in service came to be rejected and for a direction to respondent to reinstate her into service and thereby provide all consequential benefits attached to the post of Female Staff Nurse.

3. The respondents have filed their reply contending that the order of termination does not suffer from any legal infirmity and prayed for dismissal of the Original Application.

4. Heard the learned counsel for the applicant Shri R.P. Sharma and Shri Hawa Singh, learned counsel for the

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respondents, perused the pleadings and the documents annexed to the pleadings of both the parties.

5. The learned counsel for the applicant Shri R.P. Sharma argued that the impugned order is void ab-in-itio in view of the fact that in the said order of appointment it has been clearly mentioned that initial period of probation shall be 2 years extendable for another one year and not beyond that. In this regard he invited our attention to the Para 2 of appointment order dated 17/18-07-2004 (Annexure A/6). Para 2 of said order of appointment reads as:

“2. You will be on probation for a period of two years from the date of appointment extendable by another year at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority or found unsuitable for the post during probation period, will render you liable to discharge from service at any time without notice and without assigning any reason thereto.”

6. By placing reliance upon aforesaid Para 2 of the order dated 17/18-07-2004 (Annexure A/6) the learned counsel for the applicant vehemently contended that period of probation was initially for two years extendable by another one year and as such after the expiry of 3 years from the date of entry into service probation can not be extended. He further argued that in view of the aforesaid Para 2 of the appointment order, the appointing authority can not exercise the power of termination beyond the maximum

period of probation prescribed in the order of appointment on the ground of unsuitability to hold the post. In this regard, the learned counsel for the applicant Shri R.P. Sharma submitted that the applicant assumed the charge of Female Staff Nurse on 08-07-2004 and thus the maximum period of probation which comes to end on 08-07-2007, whereas, the impugned order of termination was passed on 30-06-2008/02-07-2008 i.e. beyond the period of 3 years and hence, the same is liable to be set aside. He further argued that the order of termination was passed without holding a regular inquiry.

7. Per contra, the learned counsel for the respondents, Shri Hawa Singh submitted that appointment order dated 17/18-06-2004 appointing her to the post of Female Staff Nurse is not an absolute one, but the same is subject to certain qualification i.e. failure to complete the period of probation to the satisfaction of the competent authority or found unsuitable for the post during the probation period will render her liable to discharge from service at anytime without notice and assigning any reason thereto. By referring to the condition he submitted that during the period of probation the authorities found that applicant is not suitable for the post of Female Staff Nurse and hence vide impugned order dated 30-06-2008/02-07-2008 her services were terminated. He further argued that contention

of the learned counsel for the applicant that the no order of termination after expiry of maximum period of 3 years is unfound to the service jurisprudence. He submitted that on completion of the specific period of probation, if an employee is allowed to continue on service without an order of confirmation, then possible view to be taken in the absence of anything to the contrary in the original order of appointment is that initial period of probation has been extended by necessary implication.

8. Upon hearing counsel for both the parties, the main point that arises for our consideration in the above O.A. is "whether order of termination is liable to be interfered with on the ground that same came to be passed beyond the period of probation prescribed under the order of appointment? To put it differently whether it was clause 2 of the order of appointment dated 17/18-06-2004 (Annexure A/6) which had to be treated as controlling the period of probation.

9. The learned counsel for the applicant Shri R.P. Sharma in support of his contention that clause of 2 of order of appointment dated 17/18-06-2004 had to be treated as controlling the period of probation placed reliance upon two judgments (1) Dayaram Dayal Vs. State of M.P. & Anr. [1997 (5) SLR page 292] & (2) S.N. Colleges Vs. Raveendran [2004 (7) SLR page 846]. In the said Dayaram Dayal case, the Hon'ble Supreme Court by

referring to Rule 24 of MP Judicial Services (Classification, Recruitment and Condition of Service) Rules, 1955 held as :

"It is, therefore clear that the present case is one where the Rule has prescribed an initial period of probation and then for the extension of probation subject to a maximum, and therefore the case squarely falls within the second line of cases, namely, Dharam Singh's case and the provision of a maximum is an indication of an intention not to treat the officer as being under probation after the expiry of the maximum period of probation. It is also significant that in the case before us the effect of the rule fixing a maximum period of probation is not whittled down by any other provision in the rules such as the one contained in Samsher Singh's case or in Ashok Kumar Mishra's case. Though a plea was raised that termination of service could be effected by serving one month's notice or paying salary in lieu thereof, there is no such provision in the order of appointment nor was any rule relied upon for supporting such a contention."

Observing so the Hon'ble Supreme Court by allowing the appeal preferred by the employee set aside the order of termination.

The Division Bench of the Hon'ble High Court of Kerala in the said Raveendran's case by referring to Sections 59 (5) and 59 (7) of Kerala University Act, 1974 and by following the decision of the said Dayaram Dayal Vs. State of M.P. and Anr. (supra) has held that since management failed to pass any order within the maximum period, the order of termination is liable to be set aside.

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10. Shri Hawa Singh, learned counsel for the respondents submitted that no reliance can be placed either upon the judgment of the Hon'ble Supreme Court in the said Dayaram Dayal's case or upon the Hon'ble High Court of Kerala in the said Raveendran's case. The learned counsel for the respondents invited our attention to Para 7 of judgment of Hon'ble High Court of Kerala wherein the judgment of Hon'ble Supreme Court in Dayaram Dayal is quoted and relied upon. In support of this contention that no reliance can be placed upon the said two judgments, he placed before us the judgment of Hon'ble Supreme Court dated 16th March 2012 in the case of Head Master, Lawrence School, Lovedale ...Vs. Jayanthi Raghu & Anr. (Civil Appeal No. 2012) and invited our attention to the Para 17 of the judgment which reads as under:

"17. It is apt to note here that the learned counsel for both the sides have heavily relied on the decision in High Court of Madhya Pradesh thru. Registrar and others v. Satya Narayan Jhavar. In the said case, the three-Judge Bench was considering the effect and impact of Rule 24 of the Madhya Pradesh Judicial Service (Classification, Recruitment and Condition of Service) Rules, 1955. It may be mentioned that the decision rendered in the Dayaram Dayal V. State of M.P., which was also a case under Rule 24 of the said Rules, was referred to the larger Bench. In Dayaram Dayal (supra), it had been held that if no order for confirmation was passed within the maximum period of probation, the probationer judicial officer could be deemed to have been confirmed after expiry of four years period of probation. After referring to the decision in Dharam Singh (supra), Sukhbans Singh (supra) and Samsher Singh (supra) and

other authorities, the three-Judge Bench express thus:

quote: The question of deemed confirmation in service Jurisprudence, which is dependent upon language of the relevant service rules, has been subject matter of consideration before this Court times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. Other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry order of termination has not been passed. The last line of cases is where though under the rules maximum period of probation is prescribed, but the same require a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor the person concerned has passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.

After so stating, it was further clarified as follows:

Ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service condition so indicate. In the absence of such term in the letter of appointment or in the relevant Rules, it can be inferred on the basis of the relevant Rules by implication, as was the case in Dharam Singh (supra). "But it cannot be

said that merely because a maximum period of probation has been provided in Service Rules, continuance of the probationer thereafter would ipso facto must be held to be a deemed confirmation which would certainly run contrary to Seven Judge Bench Judgment of this Court in the case of Shamsher Singh (supra) and Constitution Bench decisions in the cases of Sukhbans Singh (supra), G.S. Ramaswamy (supra) and Akbar Ali Khan (supra)."

By placing emphasis upon the aforesaid principle of the Supreme Court in the said Jayanthi Raghu's case, the learned counsel for the respondents, Shri Hawa Singh submitted that the mere fact that as on date of the impugned order of termination the applicant has completed 3 years service cant not be a ground to interfere with the impugned order of termination on the ground that the applicant was continued in the service beyond maximum probation period prescribed under Para 2 of the appointment order dated 17/18-06-2004. We found considerable force in the argument of learned counsel for the respondents Shri Hawa Singh, since the Hon'ble Supreme Court in the said case of Jayanthi Raghu's case has discussed the judgment of the Hon'ble Supreme in Dayaram Dayal case which is relied upon by the applicant.

11. The learned counsel for the respondents Shri Hawa Singh further relied upon the Judgment of Hon'ble High Court of Delhi dated 16th September, 2010 in WP (C) 8231/2009 in the case of Commissioner, NVS Vs. Rinku

Sharma. In the said Rinku Sharma's case, the Hon'ble High Court of Delhi by referring to Para 2 of the order of appointment in the said case which is on par with Para 2 of the order of appointment of the case of the applicant. In the Para 22 of the judgment the Hon'ble High Court has held as:

"22. In the instant case even if we read clause 2 of the letter offering appointment as the rule of law governing probation of the respondent, it only stipulates that the period of probation could be extended by one year. No negative covenant is contained therein that the probation cannot be extended beyond one year of the initial period prescribed i.e. two years. Thus, even on the language of clause 2 it cannot be said that after the third year reckoned with effect from 25.7.2001 i.e. on 25.7.2004 it has to be treated that the respondent was deemed to be confirmed."

The contention of the Rinku Sharma before the Delhi High Court and the contention of the learned counsel for the applicant in the instant case is one and the same.

In view of the interpretation of clause 2 of the appointment order of the Hon'ble High Court of Delhi, we are in full agreement with the submission of Shri Hawa Singh, learned counsel for the respondents that the impugned order cannot be interfered on the ground that same was passed after the expiry of the maximum of probation period.

12. The learned counsel for the applicant, Shri R.P. Sharma argued that the impugned order of termination
is correct

was passed on account of ill-will of the respondent No. 4 against her and in view of the various memorandums issued by the respondent No. 4 to her. For the purpose of appreciating this argument we perused the impugned order of termination and the same reads as under:

" In accordance with the provisions contained in Ministry of Home Affairs OM No. 44/1/59-Estt(A) dated 15th April, 1959 and in exercise of the powers conferred upon the Competent Authority and in accordance with the terms and conditions of the offer of appointment in Navodaya Vidyalaya Samiti, Smt. Vanmala R Bhagat, Staff Nurse, Jawahar Navodaya Vidyalaya, Khairabad Distt. Kota (Raj) is discharged from service of the Navodaya Vidyalaya Samiti with immediate effect on the basis of the recommendations made by the Departmental Promotion Committee."

13. A person is placed on probation so as to enable the employer to adjudge her suitability for continuation in the service and also for confirmation in service. There are various criteria for adjudging suitability of a person to hold the post on permanent basis and by way of confirmation. At that stage and during the period of probation the action and activities of the appellant are generally under scrutiny and on the basis of his overall performance a decision is generally taken as to whether his services should be continued and that she should be confirmed, or she should be released from service.

14. In the present case, in the course of adjudging such suitability, it was found by the respondents that the performance of the applicant was not satisfactory and therefore she was not suitable for the job. A perusal of the impugned order reveals that the same is fall out of her unsatisfactory service adjudged on the basis of her overall performance and such a decision can not be said to be stigmatic or punitive. This is a case of termination of service simpliciter and not a case of stigmatic termination. In view of the fact that the impugned order of termination is simpliciter in nature, we are not persuaded by the learned counsel for the applicant that the impugned order is a product of ill-will of the respondent No. 4 against her.

15. In view of the foregoing reasons we find no merit in the contention of the applicant and hence O.A. deserves to be dismissed. Accordingly, O.A. is dismissed. Under the circumstances, no order as to costs.

ந.நாராஜன்
(M. NAGARAJAN)
MEMBER (J)

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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