

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A. No.100/4189/2012
MA No.100/1042/2015
MA No.100/1043/2015
MA No.100/660/2016
MA No.100/2311/2016**

**Reserved On:17.01.2017
Pronounced on:19.04.2017**

**HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

Dr. Vishakha Kapoor
W/o Shri Rohit Kapoor
R/o Flat S-1, Block C-10,
Dilshad Garden,
Delhi-110095. .. Applicant

(By Advocate: Shri Sameer Sharma)

Versus

1. Union of India
Through the Secretary,
Ministry of Health & Family Welfare,
Government of India,
Nirman Bhawan, New Delhi.
2. National Board of Examinations,
Through its
President,
Mahatma Gandhi Marg, Ansari Nagar,
New Delhi.
3. The Executive Director,
National Board of Examinations,
Mahatma Gandhi Marg, Ansari Nagar, New Delhi.
4. Deputy Director (NM),
National Board of Examinations,
Mahatma Gandhi Marg, Ansari Nagar,
New Delhi. ..Respondents

(By Advocates: Shri Mukesh Gupta, Sr. Counsel with Shri Rakesh Gosain)

ORDER**By Ms. Nita Chowdhury**

Earlier, applicant filed **OA No. 3611/2011** claiming that she was working as Assistant Controller of Examination in National Board of Examinations (for short “NBE”). The said post has been re-designated as Deputy Director (Medical) in NBE with effect from October, 2006. In the said case applicant requested for maternity leave w.e.f. 17.7.2011. She was granted maternity leave up to 16.07.2011. After hearing the learned counsel for the parties, the OA was disposed of on 03.11.2011 with the following directions:-

“7. We have heard the counsel at some length. It is noted that the applicant is not attending the duty after 17.07.2011. However, some communication is going on between the department and the applicant on the same issue. In the circumstances, the applicant is directed to report and join the duty as early as possible but not later than 10 days. After joining the post, respondents shall release her salary by considering the intervening period as appropriate leave as per rules with another period of one week. The applicant would be at liberty to make fresh application for grant of extension of maternity/child care leave as per rules depending upon her family circumstances including the condition of newly born child. If such an application is preferred by the applicant after joining the duty, the same shall be considered by the respondents sympathetically by passing appropriate order within a period of two months from the date of receipt of such application by granting the leave in question.

8. The contentions raised by the parties are, however, kept open and in case the applicant is still aggrieved in any manner, she would be entitled to approach this Tribunal by way of appropriate proceedings including the revival of the present OA as per law, if so advised.

9. The OA, accordingly, stands disposed of. No costs”.

2. Thereafter, she filed **RA No.394/2011** in **OA No.3611/2011** which was dismissed vide order dated 25.11.2011.

3. It is stated that on 30.01.2012, the applicant went to report for duties in the office of respondents and submitted her joining. However, the Deputy Director (Administration) informed her that her services had been discharged in December, 2011. She requested for a copy of the discharge order but the same was refused. It is further stated that the applicant was informed vide letter dated 30.01.2012 that vide letter

dated 12.12.2011 her services have been discharged. The applicant applied for copy of discharge order and she received letter dated 25.01.2012 wherein it was stated that copy of the office memorandum dated 12.12.2011 is enclosed. It is alleged that no such letter was enclosed with the said letter. The applicant again filed **OA** bearing **No.605/2012** claiming that she has not received the discharge order dated 12.12.2011 and further that the vacancy of Deputy Controller of Examination in NBE be not filled up as she has been discharged from the said post during the period she was on maternity leave. After hearing the parties, the said OA was disposed of vide order dated 27.03.2012 with the following observations:-

“7. For the reasons mentioned above, we are of the opinion that as Relief No.1 has already stand granted as the respondents filed the copy of the discharge order along with the counter reply and Relief No.2 is dependent on Relief No.1, the OA rendered infructuous and is liable to be dismissed.

8. The OA is dismissed as rendered infructuous. However, liberty is provided to the applicant to file a fresh OA to challenge the discharge order as per law and the applicant will be entitled to seek the remedies available to him”.

4. Consequent upon the aforesaid observations, the present OA has been filed seeking following reliefs:-

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 12.12.2011 declaring to the effect that the whole action of the respondents discharging the services of the applicant as illegal, arbitrary and against the principles of natural justice and consequently pass an order directing the respondents to reinstate the applicant in service with all the consequential benefits deeming no such order has been passed including the arrears of back period pay and allowances.

(ii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant along with costs of litigation”.

5. The brief facts relevant to the case are that the applicant was initially given offer of appointment as Assistant Controller of Examination in NBE on 28.08.2006. And on 05.12.2006, she joined and was put on probation for a period of 2 years. On 16.01.2008, she gave birth to a

child and was issued discharge order/letter on 08.02.2008 during her probation period. The said discharge order/letter was set aside by the Hon'ble High Court of Delhi in **LPA 15/2009** vide order dated 03.03.2009. The operative part of the said order reads as under:-

“14. We would have gone into further details and also on the question of discrimination and violation of human/fundamental rights but refrain from making any further observations as the respondents have placed before us letter dated 26.02.2008 stating that they have decided to withdraw the discharge letter dated 08.02.2008 subject to the appellant not claiming consequential or monetary benefits for the period of absence or leave and she would resume duties on the same rights, terms and conditions available to her on 3.5.2007. Accordingly the appeal is allowed and the impugned order dated 27.11.2008 dismissing the writ petition filed by the appellant is set aside. The discharge letter dated 8.2.2008 stands withdrawn. The appellant will resume her service on 12.03.2009 in terms of the earlier appointment letter and as per rights, terms and conditions available to her on 3.5.2007. The appellant will not be entitled to back wages, but she will be entitled to salary for the monetary leave period in accordance with law. Appeal is disposed of accordingly”.

6. Hence, she resumed her charge/service again in NBE. On 18.01.2011, applicant gave birth to second child. She was sanctioned maternity leave w.e.f. 18.01.2011 to 16.07.2011 but she remained absent beyond the sanctioned period w.e.f. 17.07.2011 to 16.08.2011. Thereafter she was asked to appear before a two member committee set-up to examine her representation dated 17.08.2011 for leave extension beyond the sanctioned period. She submitted further representations on 04.09.2011 and 20.09.2011 for extension of maternity leave. She states that on 30.01.2012, she went to join the duties but came to know about the discharge order dated 12.12.2011, in which it was stated as below:-

- “1. Your probationary services at National Board of Examinations from the post of Deputy Director (M) are discharged forthwith.
2. Orders regarding settlement of dues (if any) shall be issued separately.
3. This issues with prior approval of the competent authority”.

She has impugned the said order stating that she was dismissed by means of impugned order dated 12.12.2011 while on probation vide a stigmatic order, which is not permissible as per rules.

7. In her letter of appointment and in the impugned order, it was clearly mentioned that she will be on probation for a period of 2 years subject to her completing the probation period satisfactorily in NBE, but she was dismissed when she had already completed the probation period, on stigmatic grounds.

8. To challenge the impugned order, the applicant submitted that the said order is stigmatic in nature as after 2 years of her joining, she should have been treated as having completed the probation period satisfactorily as probation had automatically expired on 08.10.2008. She further avers that as she is a confirmed employee, so her services could not be terminated after the probation period without holding a regular departmental enquiry. In this regard she has relied upon the judgments of Hon'ble Apex Court in cases **V.P. Ahuja Vs. State of Punjab and Others (2000) 3 SCC 239**, **Jaswant Singh Pratap Singh Jadeja Vs. Rajkot Municipal Corporation and Another (2000) 10 SCC 71** and **State Bank of India and Others Vs. Palak Modi and Another etc. 2013 (3) SCC 607**.

9. She next contended that even during the probation period, the respondents totally violated the Government of India instructions/guidelines regarding the probation period and after violating the same, one cannot say that she is not a suitable employee for confirmation after her more than five years of service.

10. Moreover, with regard to maternity leave, she submitted that she has fundamental right for grant of maternity leave under the Maternity Benefits Act, 1961. No doubt she was given 6 months of maternity leave but she still continued to remain on maternity leave as she needed to do so and after that she was discharged on 12.12.2011 during her maternity leave and the said order was never served to her.

11. Lastly, she contended that the respondent authorities had earlier also acted arbitrarily and in a mala fide manner which is clear from the earlier discharge letter dated 08.02.2008 which was set aside by the Hon'ble High Court of Delhi, vide order dated 03.03.2009 and that is how she continued in NBE.

12. The respondents strongly opposed the prayer made by the applicant with regard to the earlier discharge which has already been disposed of by the Hon'ble High Court vide **LPA 15/2009** on 03.03.2009. That matter has no relevance to the facts of the present OA. In fact, it has been admitted by the applicant herself that consequent to that order, she continued to work in NBE.

13. Further respondents contended that the applicant is a probationer in NBE, who in the present OA seeks an issuance of directions to the respondents that they are in breach of the terms and conditions of their own appointment letter dated 05.12.2006 and this is denied. They have pointed out that applicant has to her credit a break in service and she had attempted to use the order dated 03.03.2009 passed by the Hon'ble High Court of Delhi in **LPA 15/2009** as a tool to seek increments, continuity in service/seniority and pensionary benefits by filing an

application bearing **CM No.2419/2010** in **LPA 15/2009** which was dismissed by the Hon'ble High Court on 30.07.2010. The said order has already attained finality in all respects. Said order had concluded as under:-

"In our view the application is misconceived since clarification is not the remedy. The applicant is aggrieved by a cause of action which has arisen after the judgment dated March 3, 2009.

Counsel for the applicant seeks leave to withdraw the application with liberty to file a fresh petition.

Application is dismissed as withdrawn, with liberty as prayed for".

14. They further submitted that the present OA has been filed on grossly misleading, vexatious and disputed narration and questions of fact and law. The respondents have terminated her services after assessing her general performance and working and as such the impugned order is purely non-stigmatic. Further, they submitted that when an appointment is made on probation/ad hoc for a specific period of time and such appointment comes to an end by efflux of time and in that event the person holding such post can have no automatic right to continue in the post. Moreover, when a person who is engaged and put on probation as per terms of appointment, even after completion of the period of probation, he/she cannot claim to have acquired a status, as if the probation period has resulted into confirmation of services unless the rules so provide. The concept of automatic confirmation is not applicable in the case of the applicant. Applicant was appointed on probation on 09.10.2006 for a period of 2 years with the further provision that from the date of your appointment which may be extended at the discretion of the competent authority. As her probationary services were not found to

be satisfactory, she was discharged from service without casting any stigma on her. It is settled law that the employer is entitled to engage the services of a person on probation and during that period, if his/her services are not satisfactory that means he/she is not suitable for the job and the employer has every right to terminate his/her services and this cannot be termed as stigmatic order.

15. Respondents next contended that it is well settled by a series of rulings of the Hon'ble Apex Court including the Constitution Bench decision in ***Parshottam Lal Dhingra Vs. U.O.I. AIR 1958 SC 36*** and seven-Judge decision in ***Samsher Singh Vs. State of Punjab AIR 1974 SC 2192*** that services of an appointee to a permanent post on probation can be terminated or dispensed with during or at the end of the period of probation because the appointee does not acquire any right to hold or continue to hold such a post during the probation period. In ***Samsher Singh*** (supra) it was observed that the period of probation is intended to assess the work of the probationer whether it is satisfactory and whether the appointee is suitable for the post, the competent authority may come to the conclusion that the probationer is unsuitable for the job and hence must be discharged on account of inadequacy for the job. Thus it cannot be stated that the discharge order was stigmatic or punitive in nature and hence deserves to be interfered with by this Tribunal.

16. Applicant joined the services of the respondents as Assistant Controller of Examinations (later re-designated as Deputy Director Medical) on 09.10.2006. The appointment letter dated 05.12.2006 clearly states as under:-

"The post is temporary but likely to continue. You will be on probation for a period of 2 years from the date of your appointment which may be extended at the discretion of the competent authority".

She continued to be on probation (2 years from 09.10.2006, i.e., 08.10.2008) and her probationary services before her first discharge (08.02.2008) from services were not confirmed. In other words, the applicant was discharged as a probationer by a non-stigmatic discharge letter. She attended her job from 09.10.2006 to 03.05.2007 for about 6½ months. Thereafter applicant was granted 45 days of abortion leave which was scheduled to end on 17.07.2007. She was expected to join the office immediately after her sanctioned leave w.e.f. 18.07.2007. Applicant became pregnant during the period 04.05.2007 to 17.06.2007 but never joined her duties on 18.06.2007. Thereafter, after expiry of leave and a gap period she sent an application dated 29.06.2007 along with medical certificate for grant of 37 days Earned Leave which was sanctioned. She again asked for leave during July, 2007 but no leave was left in the credit of the applicant. She again sent another application dated 27.07.2007 seeking 90 days leave w.e.f. 30.07.2007 to 30.10.2007. No doubt she was not entitled to leave, but respondents considered her case sympathetically and granted her leave in order to help the applicant by invoking the provisions of Rule 32 CCS (Leave) Rules, 1972 and granted extraordinary leave of 62 days to the applicant till 03.10.2007 on the bonafide belief that applicant would join/resume duties on 04.10.2007. But, another application was received from the applicant

dated 21.11.2007 and again it was decided to grant her leave w.e.f. 24.11.2007 till delivery.

17. Applicant again became pregnant and was on leave from 09.12.2010 to 15.12.2010. She availed leave from 20.12.2010 to 17.01.2011, the day she delivered her second child. She was granted full six months maternity leave from 18.01.2011 to 16.07.2011. Thereafter she never joined her duties. The respondents issued Memorandum dated 29.07.2011 to the applicant for resuming her duties. On 26.08.2011, a two Member Committee (ME) was constituted with the approval of the competent authority to examine the representation dated 17.08.2011 for extension of her unauthorised absence w.e.f. 17.07.2011 to 16.08.2011. NBE has informed her about the leave due as on 30.06.2011 and the resultant position thereafter by NBE communications dated 09.08.2011 and 24.08.2011. Now that, a communication dated 17.08.2011 seeking grant of leave w.e.f. 17.07.2011 as leave has been received. She was informed about the meeting of the MC to be held on 06.09.2011 for which she sought another date for the meeting on 04.09.2011 and sent another request for consideration of the matter of extension of her leave again on 20.09.2011. Fresh notices were issued on 08/09.09.2011 (Annexure R-30) for the MC meeting to be held on 12.09.2011 and on 27.09.2011 (Annexure R-31) for meeting to be held on 04.10.2011 and there are postal receipts of the same (Annexure R-32) but applicant never appeared.

18. Thus, thereafter the impugned order of NBE dated 12.12.2011 was issued and sent to her, which read as under:-

- “1. Your probationary services at National Board of Examinations from the post of Deputy Director (M) are discharged forthwith.
- 2. Orders regarding settlement of dues (if any) shall be issued separately.
- 3. This issues with prior approval of the competent authority”.

19. In the circumstances, the respondents submit that the order passed on 12.12.2011 was in keeping with the service rules and during her probation period and an order which is not stigmatic and hence the OA deserves to be dismissed.

20. We have heard the learned counsel for the parties and gone through the record.

21. At the very outset it may be mentioned that the applicant, who was on probation remained absent on innumerable number of occasions, that too without informing the respondents in time and receiving prior extension of leave/sanction of leave, which is not legally permissible. Respondents granted her maternity leave even a second time and asked her to resume duty, on expiry of the same, but she failed to do so till the passing of the impugned order dated 12.12.2011. Thereafter, she tried to rejoin her charge at NBE on a date 30.01.2012, i.e. after the passing of the impugned order dated 12.12.2011. She even denied having received any letters from the respondents with regard to the impugned order dated 12.12.2011.

22. An identical question came to be decided by Hon'ble Delhi High Court in case ***National Board of Examinations Vs. Ms. Rajni Bajaj and Another 2012 SCC Online Del 865*** has been brought to our notice by respondents wherein it was ruled as under:-

“11. In **S. Sukhbans Singh v. The State of Punjab: AIR 1962 SC 1711**, the Constitution Bench of Supreme Court took the view that an employee appointed on probation, does not, on expiry of the probation period, automatically become a permanent member of the service to which he was appointed unless the Rules governing his appointment provide for such a result. In **State of Punjab v. Dharam Singh: 1968 3 SCR 1**, the Constitution Bench held that “where on the completion of the specified period of probation an employee is allowed to continue in the post without an order of confirmation, in the absence of anything to the contrary in the original order of appointment or promotion or the Services Rules, the initial period of probation is deemed to be extended by necessary implication”. In such a case, an express order of confirmation is necessary to give the employee a substantive right to the post and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation, it is not possible to hold that he should be deemed to have confirmed. In **Pratap Singh v. Union Territory of Chandigarh and Anr.: AIR 1980 SC 57**, Supreme Court again held that an employee cannot be deemed to be confirmed even at the end of the period for which he was put on probation unless an order of confirmation is expressly issued. In **Chandra Prakash Shahi v. State of UP and Others: AIR 2000 SC 1706**, the petitioner was on probation for two years. The regulations governing his service conditions did not provide for any maximum period beyond which the period of probation could not be extended. Supreme Court held that in absence of such a prohibition in the Rules, the appellant did not acquire the status of a permanent employee even on successful completion of two years” probation period.

12. Thus, **in absence of any Rule to the contrary, an employee continues to be on probation unless he/she is confirmed on the post to which he/she is appointed on probation and there is no deemed confirmation merely on account of failure of the employer to extend the period of probation. Rather, there is a presumption of deemed extension of probation of the employee. The respondent No.1 before this Court, therefore, continued to remain on probation, till the time her services were terminated.**

In the facts and circumstances of that case, which related to denial of provisions of Maternity Benefits Act, 1961, the relief was granted to the petitioner. This is not the case in this matter. The applicant has received the benefits of the Maternity Act, 1961 twice and has even been granted extraordinary leave to permit her to avail leave when she so needed it.

23. Similarly, respondents have relied upon judgment of the Apex Court in case **Rajesh Kumar Srivastava Vs. State of Jharkhand and Others (2011) 4 SCC 447** wherein it was ruled that “the order of termination passed in the present case is a fallout of his unsatisfactory service adjudged on the basis of his overall performance and the manner in which he conducted himself. Such decision cannot be said to be stigmatic or punitive. This is a case of termination of service simpliciter and not a case of stigmatic termination and, therefore, there is no

infirmity in the impugned judgment and order passed by the High Court". Same view was reiterated by Hon'ble Supreme Court in cases

High Court of M.P. Through Registrar and Others Vs. Satya Narayan Jhavar (2001) 7 SCC 161 and ***Chaitanya Prakash Vs. H. Om Karappa (2010) 2 SCC 623.***

24. Thus, seen from all perspectives, the case of the applicant is fully covered by the judgment of ***Rajesh Kumar Srivastava*** (supra). Her services were terminated during the probation period by a simpliciter order dated 12.12.2011 and cannot be termed as stigmatic. Accordingly, there is no merit in the OA and the same is hereby dismissed.

25. Applicant has filed a number of MAs. In MA No.100/1042/2015 filed on 24.03.2015, she has prayed that this Tribunal be pleased to issue appropriate directions for holding an enquiry as contemplated under Section 340 read with Section 195 of the Code of Criminal Procedure for filing false and frivolous counter affidavit before this Tribunal by concealing facts and information and forging and fabricating discharge letter has played fraud upon the Tribunal to secure adverse orders against the applicant and the said acts and omissions of Shri B.N. Khatri, Deputy Director, NBE, respondent No.4 are punishable under Sections 193 and 219 of the Indian Penal Code. The respondents have filed MA No.100/660/2016 on 12.02.2016 controverting the same and asking for a direction to the original applicant to produce the original envelope allegedly received by her on 18.03.2015 and more specifically mentioned in para (f) page 3 of her MA No.100/1042/2015. Applicant has filed MA No.100/1043/2015 on 24.03.2015 for the stay of the

proceedings but has never pressed this or argued the matter even while the applicant herself continued to seek adjournments after filing the same on 17.09.2015, 18.11.2015, 12.01.2016, 18.02.2016, 07.04.2016, 23.05.2016, 18.07.2016, 01.08.2016, 17.08.2016, 16.11.2016 and 28.11.2016, till final hearing of the OA on 17.01.2017. Another MA bearing No.2311/2016 has been filed by the applicant on 26.07.2016 to direct any Government Expert to inspect the letter dated 12.12.2011 and to compare with the admitted signature of respondent No.4, Shri B.N. Khatri, Dy. Director, NBE to show that somebody else has signed the receipt of the impugned order dated 12.12.2011. The said MAs have never been pressed by the respective parties even till the final hearing of the OA and were only mentioned after the completion of the final hearing so that they would not remain undisposed.

26. Having heard the case on merits, we do not find any cause to pass any separate orders on the MAs' especially in view of the fact that these MAs have been brought to our attention only with the prayer that they be disposed of before passing of final order in this OA. Now the hearing having been concluded, there is no merit left in these MAs. They stand disposed of accordingly. There shall be no order as to costs.

(NITA CHOWDHURY)
MEMBER(A)

(JUSTICE PERMOD KOHLI)
CHAIRMAN

Rakesh