

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****...
ORIGINAL APPLICATION NO.060/00192/2016****Chandigarh, this the 17th of November, 2017****...
CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MS. P. GOPINATH, MEMBER (A).****...**

Baljinder Singh, aged 53 years S/o Sh. Sucha Singh, Superintendent Grade-II O/O Director Sports, Chandigarh Administration, Hockey Stadium, Sector 42, Chandigarh R/o House No. 47, Sector 23-A, Chandigarh (Group B).

.... Applicant**(Argued by: Mr. R.K. Sharma, Advocate)****Versus**

1. Union Territory, Chandigarh Administration through its Administrator
2. Secretary Sports, Union Territory, Chandigarh Administration, U.T. Civil Secretariat, Sector 9, Chandigarh.
3. Director Sports, Union Territory, U.T. Chandigarh Administration, U.T. Civil Secretariat, Sector 9, Chandigarh.
4. Shri Prem Chand, the then Superintendent, Sports Department, Hockey Stadium, Sector 42A, Chandigarh, now on deputation as Administrative Officer to the office of Chief Architect Office, Union Territory, Chandigarh.
5. Shri Brij Pal, Senior Assistant O/O Director of Sports, Union Territory, Hockey Stadium, Sector 42-A, Chandigarh.

Respondents**(Argued by: Mr. Rajesh Punj, Advocate)**

ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)

1. The challenge in the instant Original Application (OA), instituted by applicant Baljinder Singh S/o Sh. Sucha Singh, is to the impugned orders dated 17.12.2014 (Annexure A-1), whereby his period of probation was extended for one year upto 14.2.2016, and dated 19.2.2016 (Annexure A-2) vide which he was reverted from the post of Superintendent Grade-II, back to the post of Senior Assistant, by the Competent Authority.
2. The epitome of the facts and the material, culminating in the commencement, relevant to decide the present OA, and exposed from the record, is that initially the applicant, belonging to Scheduled Caste category, was appointed as Clerk on 5.9.1986, in the Sports Department of Union Territory (UT), Chandigarh. Thereafter, he was promoted as Senior Assistant on 1.7.1992. The case set up by the applicant, in brief, in so far as relevant, is that he was promoted as Superintendent Grade II, on probation for a period of two years, vide orders dated 14.2.2013 (Annexure A-3). The period of his probation was stated to have been illegally extended for another one year, upto 14.2.2016 vide impugned order dated 17.12.2014 (Annexure A-1). Thereafter, the applicant was stated to have successfully completed the extended period of probation till 14.2.2016, but he was abruptly reverted from the post of Superintendent Grade II, to the post of Senior Assistant, vide

impugned order dated 19.2.2016 (Annexure A-2), by the Competent Authority.

3. Aggrieved thereby, the applicant has preferred the instant OA, challenging the validity of impugned orders, Annexures A-1 and A-2, on the following grounds :-

- I. That it is on the record of the respondents that the applicant was initially appointed as Clerk, promoted as Senior Assistant and thereafter as Superintendent Grade-II vide order dated 14.02.2013 keeping in view of his work and conduct and seniority. It is also on the record that probation period of the applicant was extended before expiry of the normal period for another one year vide order dated 17.12.2014 and before extension of period of probation he was never conveyed any unsatisfactory performance. The impugned order of extension of probation is in violation of principle of natural justice and Article 14 and 16 of the Constitution of India and the DoPT guidelines issued in the matter of probation.
- II. That it is on the record that the applicant was issued charge sheet vide Memo dated 15.12.2014 on the allegation of missing of 2 Nos. Gazebo unassembled material and on the same very day the Respondent No.5 processed case of the applicant for extension of his probation as endorsed by Respondent No.4 as is proved from noting dated 15.12.2014, without taking any report from the supervisory officer of the applicant and thus got orders for extension of probation of the applicant. In the note sheet two allegations have levelled against the applicant which are subject matter of charge sheet dated 15.12.2014 and 18.02.2016. Hence, without decision on the charge sheet, the respondents have pre-judged the guilt of the applicant and imposed penalty of 'Reduction to a lower stage' though nomenclatured as reversion keeping in view unsatisfactory performance, whereas he was never issued any memo or warning pointing out his unsatisfactory performance. Thus, the impugned order of extension of probation as well as reversion are punitive in nature, which cannot be issued without following principles of natural justice. As such, the impugned orders are liable to be set aside.
- III. That the impugned orders are malafide at the behest of Respondent No. 4 and 5 who were biased against the applicant because of his promotion as Superintendent Grade-II and had initiated note for extension of probation of the applicant on two allegations which are subject matter of the charge sheets dated 15.12.2014 and 18.02.2016 on which final decision has yet to be taken by the authorities. Since very foundation of extension of probation is based on malafide and not on

the basis of any report from the supervisory officer of the applicant, the same is liable to be set aside, as if the foundation is week, the building is bound to collapse. Therefore, the entire proceedings including extension of probation is non-est in law.

IV. That during the probation the applicant, at no point of time, was informed his short comings or given the chance to improve. Thus extension of probation and termination of probation by reverting the applicant to a lower post is in violation of consolidated guidelines issued by the DoPT.

V. That it is on the record of the respondents that on one hand they have started disciplinary proceedings against the applicant and on the other hand they have issued extension of probation and reverted the applicant during probation. Action of the respondents is not legally sustainable in view of the ratio of the judgment of Hon'ble Allahabad High Court in case titled Badri Narain Singh Versus Sub Divisional Officer, Basra, (1991) Lab IC 737 (All) holding that where disciplinary proceedings are already started but not concluded, then termination of the appointment on the ground that the services are not required, is not tenable. Similar view was taken by the Hon'ble Punjab and Haryana High Court in case titled Ved Prakash Arya Versus Haryana State Handloom and Handicrafts Corporation, (1991) 2 SLR 11 (P&H) where after the commencement of departmental inquiry against the petitioner, the petitioner's services were terminated as per rules applicable to probationers. It was held that the order of termination was really punitive and inquiry was necessary before removal. Hence, whole action of the respondents is bad in law.

VI. That it is well settled that in such like cases where the department adopts a clever ploy, the Hon'ble Court can always lift the veil to come to the truth as to what is behind the orders, otherwise such an order is arbitrary, violative of provisions of Article 14 and 16 of the Constitution. Reliance can be placed on the judgment of the Hon'ble Supreme Court of India in the case of Anoop Jaiswal Versus Government of India and Others, 1984 (1) SLR 426.

VII. That the action of the respondents is harsh, illegal, arbitrary, against the principles of natural justice, violative of Article 14 and 16 of the Constitution of India as well as consolidated instructions issued by the DoPT. Hence, the whole action is bad in law.

4. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the applicant claims that once he has successfully completed the extended period of probation till 14.2.2016, he would be deemed to have been

confirmed, but the competent authority has illegally reverted him, without any legal basis. On the strength of the aforesaid grounds, the applicant seeks quashing of the impugned orders, in the manner, indicated hereinabove.

5. On the contrary, the respondents have refuted the claim of the applicant and filed the written statement, wherein it was pleaded that the overall work and conduct of the applicant was below the bench mark, not satisfactory and he was warned to be careful in future, as depicted in Chart (Annexure R-1), so the period of probation was rightly extended and he was correctly reverted, vide impugned orders, Annexure A-1 and A-2, by the competent authority.

6. However, it was acknowledged that the service of the applicant is governed by the Punjab Civil Services (General & Common Conditions of Service) Rules, 1994 (Annexure R-6) (hereinafter referred to as the "Relevant Rules"). As per these rules, the probation cannot be extended beyond 3 years. Since the applicant did not improve his work and conduct, even during the extended period of probation, so he was rightly reverted back, as per the rules. Instead of reproducing the contents of the reply in toto and in order to avoid repetition of facts, suffice it to say that while virtually acknowledging the factual matrix and reiterating the validity of the impugned orders, Annexure A-1 and A-2, the respondents have stoutly denied all other allegations and grounds contained in the OA, and prayed for its dismissal.

7. Controverting the pleadings in reply filed by the respondents, and reiterating the grounds contained in the OA, the applicant has filed the replication. That is how, we are seized of the matter.

8. Having heard the learned counsel for the parties, having gone through the record & relevant legal provisions / rules and after considering the entire material, we are of the firm view that the instant OA deserves to be accepted, for the reasons mentioned herein below.

9. Ex-facie the main argument of the learned counsel that since the applicant has successfully completed, even the extended period of probation, he will be deemed to have been duly confirmed and thereafter, he cannot be reverted to the lower post on speculative ground, has considerable force.

10. On the other end, the celebrated contention of the learned counsel for the respondents that since keeping in view the fact that the work and conduct of the applicant was below the benchmark, during the period of probation, so, he was rightly reverted to his lower post vide impugned order, by the competent authority, is not only devoid of merit but mis-placed as well.

11. As is evident from the record that the applicant, belonging to SC category, was initially appointed as a Clerk on 5.9.1986, in the Sports Department of U.T. Chandigarh. He was promoted as Senior Assistant w.e.f. 1.7.1992. Subsequently, keeping in view the work and conduct and his seniority position, the applicant was duly promoted to the post of Superintendent

Grade II, on probation, for a period of two years, vide order dated 14.2.2013 (Annexure A-3). It is not a matter of dispute that the posts in question are governed by the Relevant rules (Annexure R-6). Rule 7 thereof, deals with the period of probation of the employees, which postulates that “A person appointed to any post in the Service shall remain on probation for a period of two years, if recruited by direct appointment, and **one year if appointed otherwise**”. Since the applicant was appointed on the post of Superintendent Grade II, by way of promotion, so as per the rules, his period of probation could be, at the most, for one year. But still, he was promoted and put on probation for a period of two years (instead of one year), vide orders dated 14.2.2013 (Annexure A-3).

12. Not only that, the period of his probation was further extended, for another one year, upto 14.2.2016, vide impugned order dated 17.12.2014, Annexure A-1, which he has completed. Once the applicant has completed even the extended period of probation till 14.2.2016, then he would be deemed to have been legally confirmed, unless otherwise provided. This matter is no longer res-integra is now well settled.

13. An identical question came to be decided by the Constitution Bench of the Hon’ble Supreme Court in the celebrated case of **The State of Punjab Vs. Dharam Singh** (SC), 1968 SLR, Page 247, wherein while interpreting the similar Punjab Rules, it was ruled that though the appointing authority did not pass a formal orders of confirmation in writing, it should be presumed to have been passed by allowing him to

continue in service after period of probation and after such confirmation, the authority had no power to dispense with their services, on the ground that their work or conduct during the period of probation was unsatisfactory. The impugned orders of removal (therein) were quashed, in this regard. The judgment in Dharam Singh's case (supra) was subsequently approved by Hon'ble Supreme Court in the case of **Head Master, Lawrence School, Lovedate v. Jayanthi Raghu & Another**, JT 2012 (3) SC 282.

14. As indicted hereinabove, in the instant case also, the applicant was promoted to the post of Supdt. Grade II, on probation for a period of two years, vide orders dated 14.2.2013 (Annexure A-3). The period of probation was further extended for one year upto 14.2.2016, vide impugned order dated 17.12.2014 (Annexure A-1), by the competent authority. As soon as, he completed the extended period of probation on 14.2.2016, and he was further allowed to work then the applicant would be deemed/presumed to have been confirmed on the post of Superintendent Grade II. The ratio of law laid down in indicated cases, ***mutatis mutandis***, is applicable to the present controversy, and is a complete answer to the problem in hand.

15. Therefore, once it is proved that the applicant would be deemed / presumed to have been confirmed on the post of Superintendent Grade II, after he successfully completed extended period of his probation till 14.2.2016, and was further allowed to perform his official duties, in that eventuality, the respondents would have no power to revert him to the lower post

on the ground that his work and conduct was below the bench mark. Thus, the impugned reversion order dated 19.2.2016 (Annexure A-2), cannot legally be sustained and deserves to be set aside, in the obtaining peculiar fact and special circumstances of the case.

16. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

17. In the light of the aforesaid prismatic reasons, instant O.A. is hereby accepted. The impugned reversion order dated 19.2.2016 (Annexure A-2), is set aside. However, the parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Dated: 17.11.2017

HC*