
(1995) 02 CAL CK 0010
In the Calcutta High Court
Case No : C.O. No. 2011 (W) of 1994

Dr. Ganesh Dubey

APPELLANT

Vs

Indian Iron and Steel Co. Ltd. and Others

RESPONDENT

Date of Decision : 28-02-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (1995) 2 CALLT 51 : 99 CWN 562

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Judgement

Satyabrata Sinha, J.—This application is directed against the office order dated 15/9/1993 as contained in Annexure "D" to the writ application whereby and whereunder the petitioners' period of probation was extended and also an order dated 15/9/1993 whereby and whereunder his duties have been curtailed.

2. The fact of the matter lies in a very short compass.

The writ petitioner joined Kulti Hospital of Respondent No. 1 in May, 1981. Prior thereto he was posted at Bokaro Hospital of Bokaro Steel Plant of Steel Authority of India Ltd. The writ petitioner was in E-3 grade for over 7 years and thereafter he was promoted to E-4 grade in 1988 which came into force w.e.f. 30th June, 1988 only for the purpose of seniority. The petitioner was made Hospital Incharge upon transfer of Dr. V. Gupta, the then hospital incharge, in routine manner. The petitioner was promoted to E-5 grade in February, 1993. The said promotion was to take effect from the date of assumption of higher responsibility. However, the said order of promotion was given effect on 31st December, 1992 for the purpose of seniority as per Promotion Policy & Rules for promotion. He allegedly assumed charge on promotion on 15/2/1993. He was to remain on probation for a period of six months. By reason of the impugned order dated 14/9/1993 as contained in Annexure "C" to the writ application his period of probation was extended. By the impugned order dated 15/9/1993, his duties have been re-allotted.

3. Mr. Basu, the learned Counsel appearing on behalf of the petitioners submits that on the expiry of the probationary period the petitioner was entitled to automatic confirmation particularly in view of the fact that he had been promoted w.e.f. 31/12/1992 and thus he must be held to have assumed charge in E-5 grade on that date. It was submitted that in any event, the probationary period could not have been extended one month after the expiry of the period of probation. The learned Counsel submitted that the impugned order has been passed mala fide as the petitioner did not pass medical bills of Sri S. N. Upadhyay, only whereafter, repressive measure began to be taken against him. The learned Counsel submitted that only to feed fat to his grudge Sri Upadhyay had issued a notice alleging that the petitioner did not attend Sri Subrata Mukhopadhyay, an employee of the company, who was admitted in the hospital in a very critical condition. The petitioner by the said letter was called upon to explain the circumstances under which he had not visited the Kulti Hospital. He submitted a show cause. By a letter dated 24/7/1993 Dy. General Manager found petitioner's explanation not satisfactory but the same being first recorded lapse, he was cautioned to be careful in future in adequately managing the hospital affairs.

4. The petitioner was issued with another letter dated 29/7/93 wherein he was given some instructions with regard to purchase of medicine. The petitioner by his letter dated 9/7/93, inter alia, stated that he did not get any information about Subrata Mukherjee's case either through telephone or call book from the hospital. However, thereafter the impugned orders were passed. It was submitted that the facts noticed hereinbefore in unmistakable term ; shows that the impugned orders have been passed malafide and with a view to victimise the petitioner.

5. The learned Counsel appearing on behalf of the respondents, however, submitted that the probation period is a trial period and nobody is entitled to be confirmed in the said post as a matter of right. The learned Counsel drew my attention to various documents to show that the petitioner has been found guilty of negligence. It was submitted that it is incorrect to contend that actions have been taken as against the petitioner because he did not pass medical bills of Sri Upadhyay, on the contrary for medical services rendered to his daughter, he had been duly charged by the hospital and in terms of the existing rules and the billed amount had been deducted from his salary. It has been stated that the bills upon which reliance has been placed upon by the petitioner and as annexed to the writ application are forged and fabricated inasmuch as such cash memos had not been issued for purchasing medicine for the use of wife of Sri Upadhyay. The learned Counsel further submitted that a vigilance case has been instituted against the petitioner for submission of a false T.A. Bill. The learned Counsel further submits that there are documents on the record to show that the petitioner did not come to hospital despite the fact that an employee of the organisation had taken sleeping pills and he was in a critical condition. It was submitted that it would appear that prior to petitioner's letter dated 9/7/93, he never took a stand that he had not been informed earlier about the said

incident ; on the contrary, the Doctor attending on said patient clearly stated in his report that he had informed the petitioner. My attention has further been drawn to the report of Dr. Ghosh which is contained in Annexure "A" to the Affidavit-in-opposition wherein he clearly stated that he had issued prescription for treating the married daughter of Sri Upadhyay and not in favour of his wife. It is stated that his signature in the purported prescription and the counter-signature in the bills are forged to prove a baseless allegation based on a got up story.

6. Although the learned Counsel for the parties have addressed me at great length on the question of mala fide on the part of Sri Upadhyay, in my opinion, the same cannot be entertained by this Court at this stage. Firstly, in view of the fact that the same is a disputed question of fact and secondly in view of the fact that Sri S. N. Upadhyay has not been impleaded as a party in this writ application. The petitioner having made serious personal allegations as against Sri Upadhyay was bound to implead him as a party in this writ application so as to enable him to controvert such allegations. Without giving any opportunity to Sri Upadhyay, to controvert the said allegations, in my opinion, it would not be proper for this court to consider the same.

7. In the *The Regional Manager and Another Vs. Pawan Kumar Dubey*, , the Apex Court held :

"When the allegations are malice in fact which are generally seriously disputed and the case cannot be satisfactorily decided without a detailed adduction of evidence or cross-examination of witnesses, courts will leave the party aggrieved to an ordinary civil suit."

8. The question which survives for consideration is interpretation of the relevant rules relating to probation. The question as to whether a person on completion of the period of probation would automatically be held to be confirmed depends upon the nature of probation as engrafted in the Service Rules.

9. Clause 14 of the Personnel Manual, 1992, of Steel Authority of India Ltd. relates the probation which reads thus :

"The probation period of executives promoted within clusters and between the clusters shall be six months and shall be reckoned from the date of assumption of charge of the post in the higher scale of pay.

On satisfactory completion of probation period, the executive shall be confirmed in the higher scale. The executive shall not be regarded as having been confirmed unless an order of confirmation, is issued to him in writing. At the end of stipulated period of probation, if an executive is not confirmed, he may be informed of the position in writing within one month's time.

The period of probation may be extended if work and conduct during the period of probation have not been satisfactory, based on the report in Rules, para 14.5.

Probation may be extended, not more than once, by a period not exceeding six months.

The decision to extend the probation shall be communicated within one month of the expiry of the probation period.

If the work and conduct of an executive is not found to be satisfactory even during the extended period of probation, he shall be placed back in the scale from which he was promoted (both for promotion within the duster as well as between the cluster) and he shall be considered for promotion only after completing one year in the lower scale.

The said rule, therefore, provides that the decision to extend the probation shall be communicated within one month of the expiry of the probation period."

10. It is not disputed that the petitioner was promoted to E -5 grade on 15/2/1993. It is true that the said promotion was to take effect w.e.f. 31/12/1992. As noticed hereinbefore, it is the contention of the respondents that the petitioner was promoted in February, 1993 and he was to be given promotion w.e.f. 31/12/1992 only for the purpose of seniority.

11. The respondents contended that the said promotion was to take effect from the date he assumes the higher responsibility. The said order of promotion does not show that he had already assumed higher responsibility on 31/12/1992. Rule 14.2 clearly states that the probation period would be six months and shall be reckoned from the date of assumption of charge of the post in the higher scale of pay. The petitioner has not stated that he had been getting higher scale of pay w.e.f. 31/12/1992. Admittedly, the said period of probation was to expire on 15/8/1993. The petitioner's period of probation was extended by a letter dated 14/9/93 i.e. within a period of one month from the date of expiry of the period of probation.

12. It may be further noticed that the respondent No. 2 recommended the case of the promotion of the petitioner, much after he allegedly refused to pass the medical bill of Sri Upadhyay which are of October and November 1992. The petitioner even on receipt of the said letter did not contend that he was to be automatically confirmed. This writ application had been filed on 19th January, 1994 i.e. much after the said orders dated 14/9/1993 and 15/9/1993 had been issued.

13. In *Union of India v. Arun Kumar Roy* reported in AIR 1986 SC 737, the Supreme Court held :-

"The fact that he was put on probation does not ipso facto make the appointment any the less temporary and for that reason his extended probation also. Unless the respondents makes out a case based on some rule which required confirmation to a post on the expiry of the period of probation, he cannot succeed on the mere ground of his being put on probation for a period of two years or by the fact that his probation was extended. He cannot rely upon the

first clause in the order of appointment either which states, that though the post is temporary it is likely to continue indefinitely. In any case, the order of termination was served on him before the expiry of the extended period of probation."

14. A person appointed or promoted on probation has to be specifically confirmed. However, in this case such order of extension of period of probation has been passed within one month from the date of expiry of the period of probation.

15. For the reasons aforementioned no relief can be granted to the petitioner in this application.

However, keeping in view of the facts and circumstances of this case, I may observed that it would be if the matter relating to confirmation of the service of the petitioner be considered by a higher authority preferably by the Director Personnel so that there may not be any apprehension of bias in the mind of the petitioner.

This application is, therefore, dismissed with the aforementioned observation, but without any order as to cost.