

(1997) 03 MP CK 0027

In the Madhya Pradesh High Court

Case No : Writ Petition No. 373 of 1995

Mrinal Kanti

APPELLANT

Vs

Small Industries Development Bank of India and Others

RESPONDENT

Date of Decision : 26-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 2 MPLJ 41

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : V.K. Tankha, for the Appellant; N.S. Ruprah, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

By this writ petition filed under Article 226 of the constitution of India, petitioner seeks quashing of the order dated 20-10-1994 whereby, the service of the petitioner as Staff Officer Grade A has been terminated during the period of probation. Petitioner further seeks quashing of the order dated 11-1-1995, whereby the appeal preferred by him against the order of termination has been rejected.

Shorn of unnecessary details, facts giving rise to the present writ petition are that vide order dated 23-8-1991 the petitioner was appointed as Staff Officer Grade A on probation for a period of two years extendable up to four years by the respondent Small Industries Development Bank of India (hereinafter referred to as the Bank) and in pursuance thereof, he joined the Bank on 12-9-1991.

According to the respondent Bank, during first two years of service, the petitioner did not give satisfactory performance and the petitioner was orally counselled to improve himself. On 29-3-1993, an office note-sheet was drawn seeking the petitioner's attention regarding delay and efficiency in the office work. Again on 14-4-1993, the petitioner was counselled to improve his work

and in the said letter, it has been stated that the petitioner proceeded for casual leave for two days from 21-1-1992 but remained absent on medical ground till 27-4-1992 i.e. for the period of more than two month's on the ground of backache, but the medical certificate produced in support thereof was from a child specialist. It was further stated in the said letter that the petitioner was asked to report to Patna Office by telegram dated 11-2-1992 and 12-11-1992, but the petitioner did not do so and remained absent till November, 27, 1992. Petitioner was categorically informed that failure to carry out office instruction has been viewed by the Bank seriously and the petitioner was asked to improve in his leave record. Again, by letter dated 10th June, 1994, petitioner was informed that from the performance appraisal report it has been found that in spite of oral counselling, no improvement was noticed in his work. It has been further stated in the said letter that the petitioner failed in desk management and shouldering greater responsibility and lacks commitment while discharging the official duties. In the said letter, it has been further stated that the petitioner was also counselled to improve his behaviour with his colleagues. Petitioner's attention was further drawn to the bank's earlier letter to show positive improvement in his leave record in view of his unauthorised absence and failure to carry out the office instruction with regard to leave. In the aforesaid premise, petitioner was advised by the Bank to make special efforts and give better account of planning and organising work systematically and to improve leave record and behaviour with his colleagues. Petitioner represented against the aforesaid communication and asked for an inquiry in the matter. Thereafter, by letter dated 27-7-1994, petitioner was informed that the respondent Bank did not find it possible to consider his case for confirmation on account of unsatisfactory performance and leave record, behaviour with his colleagues and accordingly decided to defer consideration of his confirmation up to 30th September, 1994. Petitioner again represented by his letter dated 19-9-1994 stating therein that the deferment of his case for confirmation was totally baseless and unjustified.

The case of the confirmation of the petitioner as also other candidates were considered again by the respondent Bank on 7-10-1994 and in relation to the petitioner, it has been stated as follows :

"Shri Mrinal Kanti - B.A.(Hon.) date of birth 20-1- 1970.

Shri Mrinal Kanti joined the Bank on 12-9-1991 and was posted to Bhopal. He was due for confirmation on 1-10-1993. The PAR ratings are as under :-

month		1992	period	HY 1992	1993	Eight
				1994	2.98	2.92
2.83						2.84

His leave record was unsatisfactory. The particulars of leave is as under :-

----- Period M-D Nature of leave

----- (a) September 21 to 1-04
Ordinary leave October 21, 1994 (b) October 25 to 1-05 Extra Ordinary
November 27, 1992 leave -----

In the PAR for the first half year, it is observed that the officer needs improvement in desk work, procedure, drafting, behaviour with juniors. He was orally counselled. In the PAR for 1992, the Reporting Officer observed that Shri Kanti has potential but needs to improve his performance in all the areas of his work. He was sanctioned 2 days C.L. in September 1992 with permission to leave headquarters. Shri Kanti remained absent for over 2 months. He did not comply with out advice to report to BMO for medical check-up but did so only after getting fitness certificate from his doctor after 2 months. He was advised in writing to improve his performance/leave record on June 10, 1994. In the PAR for 1993 also, it is seen that Shri Kanti was counselled orally for planning and organising his work systematically and to improve his behaviour with his colleagues and subordinates. The officer-in-charge had observed that the officer is more time conscious with regard to office timings and always status conscious. He was being watched. In view of the serious adverse comments, his confirmation was deferred up to September 30, 1994. After receiving our advice on deferment of confirmation, Shri Kanti replied to our letter dated June 10, 1994 vide his letter dated September 8, 1994, disputing the observations conveyed to him. He has mentioned that:

i) He has never failed in his duties and our observations that he has failed in desk management and in shouldering greater responsibilities are totally improper, illogical and subjective.

ii) His behaviour with the colleagues has always been respectful, co-operative and gentle and his colleagues are not only happy with him but are surprised that he has been given counselling for improving the behaviour. He has taken leave only when it was very necessary and he had not kept work pending even though proceeded on leave. He has raised the question whether it is illogical or wrong to go on leave even when he has to discharge some important responsibilities?

iii) It is only out of prejudice that Reporting Officer has given a bad report, i.e. the report for the year 1993 refers to his leave record for the year 1992.

The Manager, in-charge, Bhopal Office has rejected all his arguments and has mentioned that :

(a) Shri Kanti is generally argumentative. He was found reading books during the office hours at a number of occasions and when pointed out to him he replied that he was reading in the interest of nation. Also, despite informally counselling to be neat and clean while maintaining office records, there is no improvement.

(b) He has been absenting himself frequently and has also expressed his inability to stay beyond office hours even during closing work.

Although Shri Kanti has not availed of any leave after November, 1992 except for

12 days in June 1994 and 1 month during September/October 1994, he has been availing of CL with the result that he has only 2 days CL left in 1994, Shri Kanti has been taking up IAS examination and perhaps more involved in the preparation for these tests and thus not involving himself in the office work. The special PAR for August 1994 mentions that "there is no improvement in desk management and he is in the habit of taking leave without much bothering about office contingencies and that he is more conscious of himself and needs to watch further before taking a decision on confirmation." Another aspect is with reference to his inter-personal relationship. Despite our efforts, he has not shown any improvement in his behaviour, as may be seen from the report. We may, therefore, dispense with his services after giving one month's pay in lieu of notice period."

It is the stand of the petitioner that persons having similar records have been confirmed and in this connection, learned counsel specifically pointed out the name of Sanjay Jain and Ranjeet Singh. Service of Ranjeet Singh has since been terminated. Cases of Sanjay Jain and Ranjeet Singh have been dealt with by the Bank in the following manner :

(i) Shri Sanjay Jain (B.Com. ICWA) date of birth 6-9-1969.

Shri Sanjay Jain joined the Bank on 6-9-1991 and posted to Bhopal. He was due for confirmation on 1-10-1993. The ratings in PAR are as under:-

-----					HY	1992	1993
Eight	month	1992	period	ended		Aug.	1994
-----					3.05	3.21	3.65
3.81 -----							

It was observed from his PAR for first half year that he needs improvement in planning of desk work, drafting and inter personal relations. The Reviewing Officer observed that Shri Jain's relation with other staff members is unsatisfactory and he loses his composure in quite a few occasions; he must learn to maintain cordial relations and coolness of mind. He was orally counselled on this aspect. In the PAR for 1992 also, the Reviewing Officer observed that Shri Jain needs to maintain his temperament/coolness of mind and improve his behaviour. In the PAR for 1993, the Reviewing Officer felt necessary that he may be given oral/writing counselling, for behaviour, however, the officer-in-charge felt that it was not necessary as there is improvement.

It may be seen that he has been getting better ratings year after year. In view of the consistent adverse remarks in PARs about his behaviour, it was decided to defer consideration of his confirmation for one year i.e. upto September 30. 1994. Bhopal Office reviewed his performance during January-August, 1994. It is seen that Shri Jain has earned very good rating. The PAR mentions that he is sincere and committed officer and there is significant improvement in his work performance and behaviour. The ratings under "Behaviour with Colleagues" improved from 2.51 to 3.15. The officer-in-charge has observed that Shri Jain will

be an asset to the organisation in the coming years. Bhopal Office has recommended for his confirmation. In view of this as also that the officer is hard working, innovative and sincere, we may consider his confirmation with effect from October 1, 1994.

(ii) Shri Ranjit Singh (M.Com.) date of birth 15-8-1966

He joined SIDBI, Bombay on September 16, 1991 and was due for confirmation on October 1, 1993. The ratings in his PARs are as under:-

-----					HY	1992	1993
Eight	month	1992	period	ended	Aug.		1994
-----					3.04	2.80	2.52
2.66	-----						

In his PAR for 1993, he was satisfactory on knowledge of methods, procedures, dependability resourcefulness and analytical skills. The Reviewing Officer has observed that Shri Singh's output is not in accordance with the requirement of the office. As he was struggling to come into grips with proper understanding, he was intensely counselled. He was advised to be more judicious in availing his leave. The officer-in-charge had stated that the officer has been counselled from time to time but he has yet to show improvement. His leave record is as under :-

-----				Period	M-D	Nature
of	Leave	-----				(a)
February	17-24,	1992	0-08	Ordinary	leave	(b)
September	1-8,	1992	0-08	Ordinary	leave	(c)
September	20-24,	1993	0-05	Ordinary	leave	(d)
November	11-26,	1993	0-11	Ordinary	leave	

In April, 1994 the officer was advised in writing to improve his performance and leave record in his own interest. WRO was advised to keep a close watch on the overall performance of Shri Singh.

In view of this, in July 1994, it was decided to defer consideration about his confirmation for a period of one year i.e. upto September 30, 1994.

WRO reviewed his performance and mentioned, that during the last four months, the officer has shown slight improvement in his work performance and attendance. Shri Singh continues to receive satisfactory rating in critical attributes such as procedures, accuracy, resourcefulness and analytical skills. WRO has recommended that the position regarding confirmation may be reviewed after six months. It is felt that Shri Singh has not shown improvement in his work performance. However, we may accept WRO's recommendation and extend the probation period of Shri Singh up to 31-3-1995."

It is to be borne in mind that this Court is not a Court of appeal against the orders of the disciplinary authority or the appellate authority and cannot enter into meticulous examination of the materials to come to a different finding. In

the case of Sanjay Jain, the respondent Bank found improvement and the ratings in PAR was better than that of the petitioner. In the case of the petitioner, it was a constant decline whereas, in the case of the said Sanjay Jain, it was constant increase. As regards Ranjit Singh, the record show that he has shown slight improvement in his work, performance and attendance and taking into consideration the aforesaid fact, it was decided to extend his probation up to 31-3-1995, Later on, the service of this person has also been terminated. In any view of the matter, the respondent Bank saw improvement in the work performance and attendance, the said decision was taken. Petitioner cannot compare himself with the aforesaid Singh. Accordingly, I negative this submission of the learned counsel for the petitioner.

Shri Tankha, in support of the writ petition then submits that the order of termination of service of the petitioner casts stigma on him and the same has been done without holding any enquiry. This, in the submission of the learned counsel is in the teeth of principle of natural justice. However, Shri Ruprah appearing on behalf of the respondents contend that considering the overall performance of the petitioner, the respondent Bank decided to terminate his service during the probation period and not because of some specific charges. Respondents have produced the proceeding which shows that the petitioner's service has not been terminated as a measure of punishment casting stigma because of some specific charges, but on consideration of the petitioner's overall performance and some inaction on his part. In that view of the matter, the whole premise on which the learned counsel proceeds that the order of termination caste stigma on him is unfounded. Reference in this connection can be made to a decision of a Supreme Court in the case of Governing Council, K. M. Institute of Oncology v. Pandurang Godwalkar 1992 L.A.B. I.C. 2439, wherein it was held as under :-

"If decision is taken, to terminate the service of an employee during period of probation, after taking into consideration overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment. It need not be said that the appointing authority at stage of confirmation or while examining the question as to whether the service of such employee be terminated during the continuance of the period of probation, is entitled to look into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee."

Shri Tankha then submits that the disciplinary authority took into consideration the report of the controlling authority and did not consider the representation of the petitioner while taking the decision to terminate the service of the petitioner during probation and the same is an act of mala fide in law, which vitiates the impugned order. A perusal of the proceeding of the respondent Bank which led to passing of the impugned order shows that the stand of the petitioner in its representation was taken into consideration by the respondent Bank, and,

thereafter, the impugned decision was taken. On consideration of all the relevant factors the respondent Bank has come to the conclusion that in view of the overall performance of the petitioner, he does not deserve to be confirmed in the Bank service. I do not find any mala fide in the same as contended by the learned counsel.

As a last straw, Shri Tankha submits that the petitioner was appointed on a probation for a period of two years by order dated 23-8-1991 and petitioner having joined the service of the Bank on 12-9-1991 his probation shall be deemed to have come to an end on 11-9-1993 i.e. after expiry of two years and accordingly, the petitioner shall be deemed to be confirmed. The order of appointment of the petitioner on probation was for a period of two years which was extendable up to 4 years at the discretion of the Bank. Petitioner has not placed on record any document to show that any order of confirmation was passed, in fact, by communication dated 27th July, 1994, the petitioner was informed that the Bank has deferred consideration of his confirmation for a period of one year i.e. September 1994. Thus, the respondent Bank never confirmed the service of the petitioner and before expiry of period of 4 years, his service has been terminated during the probation period. Thus, the stand of the petitioner that his service shall be deemed to be confirmed after an expiry of 2 years has no substance. I am fortified in my view from the Judgment of Supreme Court in the case of Municipal Corporation, Raipur Vs. Ashok Kumar Misra, , wherein, the Supreme Court held as follows :-

"6. Exercise of the power to extend the probation is hedged with the existence of the rule in that regard followed by positive act of either confirmation of the probation or discharge from service or reversion to the substantive post within a reasonable time after the expiry of the period of probation. If the rules do not empower the appointing authority to extend the probation beyond the prescribed period, or where the rules are absent about confirmation or passing of probation then inaction for a very long time may lead to an indication of the satisfactory completion of probation. But in this case Rule 8 expressly postulates otherwise. The period of probation is subject to extension by order in writing for another period of one year. Passing the prescribed examinations and successful completion of probation and to make an order of confirmation are condition precedent. Mere expiry of the initial period of probation does not automatically have the effect of deemed confirmation and the status of a deemed confirmation of the probation. An express order in that regard only confers the status of an approved probationer."

9A. All the submissions made on behalf of the petitioner having failed, I do not find any merit in the writ petition and it is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.