
(2015) 09 DEL CK 0309
In the Delhi High Court
Case No : W.P. (C) 8452/2015

Naveen Kumar

APPELLANT

Vs

Chairman, Delhi Transport Corporation

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Citation : (2015) 09 DEL CK 0309

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Abhay Singh, Veena Singh, Chiral Dugar, Vindhya Singh and D.R. Roy, Advocates, for the Appellant; Latika Chaudhary, Advocate for Avnish Ahlawat, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—The petitioner by the present writ petition seeks direction to quash the order passed by the Central Administrative Tribunal(hereinafter referred to as "CAT") dated 25.02.2014 by which the order passed by the DTC by which the period of probation was not extended, neither the petitioner was regularized and his services were terminated.

2. The petitioner was selected for the post of Driver by the DSSSB in the year 2009 on probation for a period of two years. The petitioner, out of 730 days did not attend work for 447 days. Resultantly, his period of probation was not extended and an order of termination was passed. It is the case of the petitioner that he could not attend to his duties on account of his own sickness and sickness of his father and on account of sickness, his father eventually died.

3. Learned counsel for the petitioner submits that the petitioner has a good track record, there has been no complaint against him by his senior colleagues, neither there is any complaint with regard to his period of probation as a Driver. He has also drawn the attention of the Court to the order passed by the Appellate Authority by which it was recommended that the period of probation of the

petitioner be extended by one year. It is submitted that a perusal of this order would show the conduct of the petitioner and it would also show that it is a fit case where the period of probation of the petitioner should have been extended.

4. Ms. Chaudhary, learned counsel for the respondent enters appearance on advance copy and submits that the law with regard to a probationer is well-settled. She further submits that the period of probation was not extended as the respondent found the petitioner to be unfit for the job on account of his absence of 447 days out of 730 days. She further submits that the petitioner also did not show sense of discipline, neither any medical certificate nor any leave application was made during this entire period.

5. We have heard the learned counsel for the parties. The present case is to be decided on the touchstone of the law laid down by the Apex Court.

6. In the case of *Rajesh Kohli Vs. High Court of J. and K. and Another*, , the Supreme Court has discussed in detail the scope and ambit with regard to the law relating to probationers. In the case of *Rajesh Kohli (Supra)* during the period of probation personal record of the petitioner therein revealed that there was a criminal complaint against him for his conduct when he was an advocate; complaint of misbehaviour and problem causing in District of posting; and the petitioner had not joined his place of posting for certain period for which an explanation had been sought from him. In this backdrop the period of probation of the petitioner therein was not extended and his services were terminated. Paragraphs 18 and 19 of *Rajesh Kohli (Supra)*, read as under:

"18. During the period of probation an employee remains under watch and his service and his conduct is under scrutiny. Around the time of completion of the probationary period, an assessment is made of his work and conduct during the period of probation and on such assessment a decision is taken as to whether or not his service is satisfactory and also whether or not on the basis of his service and track record his service should be confirmed or extended for further scrutiny of his service if such extension is permissible or whether his service should be dispensed with and terminated. The services rendered by a judicial officer during probation are assessed not solely on the basis of judicial performance, but also on the probity as to how one has conducted himself.

19. The aforesaid resolution taken by the full court on its administrative side clearly indicates that the matter regarding his confirmation or otherwise or extension of his probation period for another one year was considered by the full court but since his service was not found to be satisfactory on consideration of the records, therefore, the full court decided not to confirm him in service and to dispense with his service and accordingly recommended for dispensation of his service. On the basis of the aforesaid recommendation of the High Court, an order was passed by the Government of Jammu & Kashmir dispensing with the service of the petitioner."

7. In the case of *Rajesh Kumar Srivastava Vs. State of Jharkhand and Others*, ,

while taking the records of the petitioner into consideration, the period of probation was not extended. It was held that a person is placed on probation so as to enable the employer to adjudge his suitability for continuation in the service and also for confirmation in service. Paragraphs 9 and 10 of the judgment read as under:

"9. The records placed before us disclose that at the time when the impugned order was passed, the appellant was working as a Probationer Munsif. A person is placed on probation so as to enable the employer to adjudge his 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 probation (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 he should be confirmed, or he should be released from service. In the present case, in the course of adjudging such suitability it was found by the respondents that the performance of the appellant was not satisfactory and therefore he was not suitable for the job.

10. The aforesaid decision to release him from service was taken by the respondents considering his overall performance, conduct and suitability for the job. While taking a decision in this regard neither any notice is required to be given to the appellant nor is he required to be given any opportunity of hearing. Strictly speaking, it is not a case of removal as sought to be made out by the appellant, but was a case of simple discharge from service. It is, therefore, only a termination simpliciter and not removal from service on the grounds of indiscipline or misconduct. While adjudging his performance, conduct and overall suitability, his performance record as also the report from the higher authorities were called for and they were looked into before any decision was taken as to whether the officer concerned should be continued in service or not."

8. In this case, the period of probation was not extended and neither the service of the petitioner was regularized as he was on leave for 447 days out of 730 days of his service and thus, the petitioner would be an unfit candidate for the purpose of regularization. The petitioner also showed scant regard to the Rules as no application for leave was submitted.

9. We accept the contention of Ms. Chaudhary that the termination of service during the period of probation cannot be held to be stigmatic in the way of his future appointment. In this regard, a reference may be made to the case of Chaitanya Prakash and Another Vs. H. Omkarappa, , wherein it was held that the termination of service during the period of probation cannot be held to be stigmatic.

10. Having regard to the above stated facts, in the absence of any application for leave and taking into account the long period of unauthorised absence, we do not find any infirmity in the order passed by the CAT.

11. The writ petition is dismissed accordingly.