

(1982) 08 DEL CK 0034
In the Delhi High Court
Case No : Civil Writ Appeal No. 74 of 1973

N.P. Seshadri

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-08-1982

Acts Referred:

Citation : (1982) 22 DLT 55

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : G.D. Gupta and Ratan Lal, for the Appellant;

Judgement

M.L. Jain, J.

(1) In April 1967, the Upsc advertised recruitment for six posts of Deputy Directors (Family Planning) in the Song & Drama Division of the Ministry of Information & Broadcasting. The posts were temporary but were likely to continue indefinitely. The petitioner applied. He was at that time an Assistant Information Officer in the Planning Commission. The Upsc selected six other persons. One more post of a Deputy Director was created in September, 1968 and the Commission was requested to recommend a suitable candidate for that post. The Commission recommended the petitioner and he joined as Deputy Director on 15-11-1968. He was placed on trial for a period of two years. That period expired on 14-11-1970. The Head of the Department was Col. H.P. Gupte.

(2) The petitioner alleges that in 1969, he was put in charge of coordination, discipline and vigilance. While going through the files relating to vigilance, he detected many irregularities committed by the said Col. Gupte. The petitioner also found that Lenin Pant and V.V. Mane, two Deputy Directors had not produced the original certificates of qualification at the Upsc interview. He put up a note against them. He was also pressurised by Col. Gupte to make vigilance cases against innocent artists and to involve one Birendra Narain in a criminal case but the petitioner refused to oblige. He also lodged a complaint against another

Deputy Director H.M. Desai resulting in a Cbi enquiry. He also reported a case of cheating by the said Lenin Pant, Col. Gupte was displeased at all this and got him transferred to Bhopal. Upon his representation, the transfer was ultimately cancelled by the Ministry of Information and Broadcasting. Col. Gupte began to entertain prejudice against him. He entered adverse remarks in his confidential report for the year 1969, communicated to him by memo. dated 8-4-1970 which was received by him in July, 1970. The petitioner submitted a representation against the said remarks alleging that the remarks were given on account of the prejudices harboured by Col. Gupte. The representation was ultimately rejected on 4-3-1971. Then, he got adverse entry again in the confidential report for the year 1970 which was conveyed to him in March, 1972. These remarks were also on account of mala fide and prejudices on the part of Col. Gupte. He made a representation against these remarks on 9-4-1972. It was rejected on 25-5-1975. He again got adverse remarks for the year 1971 which were communicated to him on 12-10-1972. He filed a representation on 21-11-72. It was rejected on 3-1-1976.

(3) Meanwhile the services of the petitioner were placed back at the disposal of the Planning Commission, 8 months after the expiry of the trial period of two years on 14-11-1970. The petitioner challenged the order of his reversion in a writ petition in this Court filed on 7-8-1971. He withdrew the petition on 15-9-1971. On 12-11-1971 the order of his reversion to the Planning Commission was cancelled, his period of probation was extended up to 14-11-1972 and he was transferred to Bangalore.

(4) The petitioner had been on leave from 9-8-1971 to 19-11-1972 and did not join at Bangalore.

(5) While Col. Gupte gave reports out of malice prejudice, on 3-1-1969 the Jt. Secretary of the Ministry gave favorable confidential report. The Minister concerned gave him a special confidential report on 7-3-1971 praising the work done by him for the last two years and considering his work as outstanding recommended him for a Padma reward. The Minister for Health and Family Planning also appreciated his work and gave him a letter of appreciation. The former Chief Justice of Patna High Court also wrote to the Minister on 3-10-1970 appreciating the work of the petitioner. The Minister of foreign Trade had written to his Minister of Information and Broadcasting on 4-8-1972 asking for the services of the petitioner in connection with the Asia Fair '72 Trade Fair. But Col. Gupte did not respond to his request, but he managed to assist the Asia Fair '72 and received acknowledgement of his services by the Minister. He narrated all these facts in order to show that the adverse remarks given by Col. Gupte were wholly mala fide, while during the period of 20 years of service, he received no other adverse entry.

(6) On 13-12-1972 he was served with an order terminating his appointment as Deputy Director with immediate effect and placing his services at the disposal of the Planning Commission.

(7) After receiving this order, he sent a representation on 27-12-1972 and filed this writ petition on 18-1-1973 praying for the quashing of the adverse entries and the impugned order of reversion of 13-12-1972. He further prayed that he should be declared as confirmed Deputy Director with effect from the date it became due.

(8) In the counter affidavit, it was stated that the work and conduct of the petitioner during his service in the first two years on probation was not found satisfactory and he was advised to improve his performance to the satisfaction of the Director failing which his services in the Division will be dispensed with, vide memo. dated 12-11-1971. The case of the petitioner was considered by the Departmental Promotion Committee on 3-11-1972. The Committee was of the view that the petitioner had not shown any improvement in spite of his probation having been extended. It was unanimously of the view that the services of the petitioner should be terminated. The recommendation of the Committee was placed before the Government and it was decided by the Government on 29-11-1972 that the services of the petitioner as Deputy Director in the Song & Drama Division be terminated and he be reverted to the parent department. Thereafter, the impugned order was issued on 13-12-1972. It was denied that the petitioner became entitled to automatic confirmation. No permanent post against which the petitioner could be confirmed was available during the period from 15-11-1968 to 13-12-1972. The termination does not cause any stigma on the petitioner. The orders of termination were not made by way of punishment. There were no mala fides involved in the order of transfer to Bangalore. Rather, after the extension of the probationary period, it was felt that he may be given a chance to show his work and conduct at a place far away from the headquarters. On his reversion the Planning Commission placed his services at the disposal of the Ministry of Foreign Trade with effect from 13-12-1972. He is said to have risen to be a Joint Director over there.

(9) The allegation that the annual confidential reports were mala fide was refuted. It was stated that the report of the Joint Secretary referred to by the petitioner pertained to a very brief period. The petitioner joined on 15-11-1968 and the alleged report was written on 3-1-1969, while the confidential reports are written after at least three months "performance. The reporting officer of the petitioner is the Director and the Joint Secretary is only a viewing officer. The report of the Joint Secretary cannot be taken as an overriding opinion. The note of Mr. Satya Narain Sinha, the then Minister of Information and Broadcasting, addressed to the Secretary is denied to have been received in the office. It was claimed that the transfer of the petitioner to Bhopal was in public interest and administrative convenience and not mala fide. It was ordered by the Ministry and not by Col. Gupte. Since the petitioner was the junior most, he was directed to be transferred to Bhopal. He represented that he was not well versed in Hindi. It was then decided that his headquarters might be changed for a period of three months from Bhopal to Delhi and after that he might be sent to South, namely, Bangalore. The adverse entries were written by Col. Gupte and reviewed by the

Joint Secretary Mr. Ghose and countersigned by Mr. R. K. Dass. The remarks recorded by Col. Gupte were approved by the aforesaid two officers. Besides, probationary reports known as assessment reports were duly recorded, for the period 15-11-1968 to 14-11-1969 and 15-11-1969 to 14-11-1970. The assessment reports were duly sent to the UPSC. After the extensions of the probationary period, he was transferred to Bangalore in order to give him a chance to improve. The petitioner did not comply with the order of transfer, but instead continued to remain on leave on various grounds. The period of probation was due to expire on 14-11-1972. It is at that time that the petitioner expressed his willingness to proceed to Bangalore.

(10) In his counter affidavit Col. Gupte denied all the charges of mala fides and prejudice.

(11) The learned counsel for the petitioner based his case upon two grounds (1) mala fides on the part of the Director, Col. Gupte and hence the adverse confidential reports which affected his confirmation and (2) upon automatic confirmation under the Ministry of Home Affairs memo dated 15-4-1959.

(12) As regards the mala fides, it will be noticed that all what has been stated is that since the petitioner was making complaints and nothings against certain officers of the department who are alleged to be favorites of Col. Gupte, he made adverse remarks against the petitioner. It does not appear reasonable to hold that an officer will be annoyed because the petitioner was exposing the misdeeds of his subordinates. It does also not appear true because if it were so, the Joint Secretary and the Secretary would not endorse the remarks of the reporting officer. The commendation certificates got from the Minister are of no avail to the petitioner as they cannot take the place of the confidential reports required to be given by the concerned officers. Briefly, out of the four years, it was said that for 1969 he kept away from the field activity, for 1970 he was behaving like bully quarrelling with every one, trying for job elsewhere and working on whims and fancy, for 1971. he failed to improve his performance and was below par. he was more interested in quarrelling with the Director than to discharge his duties faithfully. He then remained on leave of all kinds for over 15 months in order to keep away from work. The allegation of mala fides, Therefore, seems to be incorrect and cannot be upheld and the confidential reports cannot be directed to be quashed.

(13) Relying on *Gurdial Singh Fijji v. The State of Punjab and Others*, 1979 SLR 804 Mr. Gupta urged that unless the entries were communicated in time and representation decided in time. these cannot be acted upon in order to judge the suitability of the officer. He then invited my attention to the relevant portions of the aforesaid 1959 memo of the Ministry of Home Affairs that a probationer should be given an opportunity to work under more than one officer during the period of Ins probation and report on his work obtained from each one of those officers. The reports for the whole period may then be considered by a Board of Senior Officials for determining whether the probationer concerned is fit to be

confirmed in service. It is alleged that this was not done in the case of the petitioner. In reply, it was pointed out that there was only one Director. Therefore, it was not possible to rotate the petitioner between different officers senior to him. Next it was urged that according to the said memo the period of probation is normally two years and according to the instructions of the Home Ministry, probation cannot be extended beyond another two years. Since the petitioner was appointed on 15-11-1968 and reverted on 13-12-1972 that is after completion of four years he should be deemed to have been confirmed as held by the Supreme Court in the State of Punjab v. Dharam Singh, 1968 SLR (SC) 247. But in that case the rules did not provide for extension of probation beyond three years, the posts were permanent and the candidates served from 1957 to 1963 on probation. N.P. Pandey v. Union of India and others, 1979 (3) SLR 72 equated the 1959 memo to statutory rules, but the petitioner there continued on probation for nine years and the reports for the probationary period were favorable. The cases cited by Mr. Gupta show that an unreasonably long time lapsed between the end of probation and reversion and it was in this context that the courts held that the officer be deemed to have been confirmed and article 311 of the Constitution would be violated if his services were terminated without an inquiry. But this is a case in which the Departmental Probation Committee considered the case of the petitioner on 3-11-1972 before the expiry of the probation period and the Committee did not find it fit to retain him in the Song & Drama Division and the order of reversion was made in less than a month after the end of the probation. It appears that the Committee had found that the petitioner never cared to improve and did not avail of an opportunity to be further away from Col. Gupte and show his work in Bangalore. He seemed to be elated and contented with the commendatory certificates procured by him from his Minister and Ministers of other departments which have no bearing and cannot take place of the regular confidential reports and other record. The DPC does not only consider the confidential reports but has also to make its own independent assessments and in respect of suitability this court cannot substitute its own judgment in place of the Committee. The fact that the representations of the petitioner were subsequently rejected justifies the view adopted by the Committee. Moreover, there was no permanent post available against which the petitioner could be confirmed. Mr. Gupta contended that the petitioner could be confirmed even against a temporary post. He relied on State of Uttar Pradesh and Another Vs. Dr. M.J. Siddiqui and Others, , and Baleshwar Prasad and others v. State of Uttar Pradesh, 1980 (3) SLR 422. where it was held that a substantive appointment can be made in a temporary vacancy if the post is likely to continue or in fact continues for several long years. Now, it is true that an appointment to a temporary post may be substantive or on probation or on an officiating basis, but such an appointment gives no right to the post and services can be terminated at any time except when the appointment to a temporary post is for a definite period : Parshotam Lal Dhingra Vs. Union of India (UOI), . It only means that substantive appointment is not equal to confirmation and the holder of such an appointment acquires no right to the post. Mr. Gupta, however, maintained

further that even a temporary servant cannot be removed except on the ground of unsatisfactory conduct or unsuitability : The Manager, Government Branch Press and Another Vs. D.B. Belliappa, . These observations were made in connection with a charge of discrimination where a senior officer was retrenched in preference to a junior officer and do not seem to be applicable in this case. Nothing could possibly be done in this case because the first spell of probation was not found satisfactory and during the second spell of two years, he remained on leave for over fifteen months and shirked from transfer even to the South. What else could be done to such an officer except to send him back ? His conduct was unsatisfactory and he was certainly unsuitable and had to be sacked. In these circumstances, one cannot accept the argument that the petitioner is deemed to have been automatically confirmed and could not be reverted without an inquiry under article 311 of the Constitution.

(14) Both the contentions of the petitioner are rejected. I find no merit in the petition. It is hereby dismissed. No costs.