

(2010) 04 JH CK 0046
In the Jharkhand High Court

Shantanu Mazumdar

APPELLANT

Vs

Vice-Chairman, Central Administrative Tribunal and Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Citation : (2010) 04 JH CK 0046

Hon'ble Judges : Pradeep Kumar, J;M.Y. Eqbal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This writ petition is directed against the judgment and order dated 18.12.2000 passed by Central Administrative Tribunal, Patna in O.A No. 451 of 1997 whereby the Tribunal dismissed the application and held that the order dated 25.3.1997 issued by the respondents removing the petitioner from service needs no interference.

2. The facts of the case lie in a narrow compass:

Petitioner was appointed as Administrative Officer in Indian Lac Research Institute with effect from 16.12.1992 by office memo dated 10.9.92. Initially, the petitioner was kept on probation for a period of two years from the date of his joining on the post. As per terms of the appointment, period of probation may be extended at the discretion of the competent authority. It appears that after the expiry of two years of probationary period some adverse remarks were communicated in the year 1995 which, after accepting detailed representation, were expunged vide order dated 7.8.1996. In 1996, petitioner was asked to show-cause for his alleged mis-behaviour with the sub-ordinates and for financial irregularities. In March, 1996 vide Office Order dated 30.3.96, the probationary period of the petitioner was extended for a period of one year i.e. upto 14.12.95. By Office Order dated 25.7.96 petitioner was transferred and posted as Administrative Officer in the National Research Centre, Gujarat. Simultaneously, vide Order dated 9.4.96, an Inquiry Committee was constituted for conducting

impartial inquiry on the allegation levelled against the petitioner. However, without waiting the result of the inquiry, the case of the petitioner was placed before the Departmental Promotion Committee(D.P.C.) who recommended for his discharge from service. Hence, order of discharge was passed by the respondents vide order dated 25.3.97. The said order was challenged by the petitioner before the Tribunal by filing aforementioned O.A. No. 451 of 1997, which was dismissed. Hence, this writ petition.

3. The Tribunal proceeded on the basis that the initial appointment of the petitioner was on probation for a period of two years, which was subsequently extended but since the appointment was on temporary basis on probation, failure to complete the period of probation satisfactorily would render the applicant liable to be discharged from service. His services could be terminated by the concerned appointing authority during the period of probation without any show cause notice. The Tribunal held as under:

13. It may be pointed out that confirmation in service is made only once at the entry grade. An officer, who has successfully completed the probation, is considered for confirmation. Specific order of confirmation is issued when it is clear from all angles. In the instant case, the applicant was directed recruit in the grade of A Administrative Officer. He was required to undergo probationary training for specified period. He was to be confirmed only after satisfactory completion of the probationary period. However, in the instant case, we find that the applicant failed to complete the probationary period satisfactorily. His performance report along with ACR were considered by the duly constituted DPC, on whose recommendation, his services were terminated. The applicant has assailed the impugned order of termination on the ground that he was not given show cause notice prior to termination of his services and, as such, the principle of natural justice has been violated. It may be pointed out at this stage that the matter related to a probationer officer, who was yet to be confirmed in service. It is different from the employees/officers who have already been confirmed in service. For such persons, there is a specific provision under law to proceed in the matter of termination of services by adopting prescribed procedure, which includes the provision for issue of a show cause notice, etc. However, in the case of a probationer officer, there is no such specific provisions. It is guided by the terms and conditions of the appointment. In the instant case, the appointment letter dated 10th September 1992 (Annexure--1) had made it clear that failure to complete the period of probation satisfactorily will render the applicant liable to be discharged from service. During the period of probation, the appointing authority can terminate the services of the applicant without notice and without the payment of salary in lieu thereof.

14. We have perused the proceedings of the relevant DPC held on 16.2.1996, 28.6.1996, 6.11.1996 and 14.2.1997 and find that the case of the applicant has been considered in the meetings of the DPC from time to time. In the meeting of DPC held on 16.2.1996, it was recommended that the probation period of the

applicant be extended upto 14.12.1995. The case of the applicant was again considered for confirmation in the grade of A.O. by DPC in its meeting held on 6.11.1996 and it was decided that special and upto date report on the performance of 3 Administrative Officers mentioned therein, including the applicant, be obtained and placed before the next DPC for adjudging their fitness/suitability or otherwise for the purpose of ? clearance of probation period. It appears that along with special report , ACR etc., the matter was again placed before the DPC in its meeting held on 14.2.1997. It was noted that the applicant had been given opportunities to work under different officers from time to time but it was observed that in spite of this and extension of his probation on recommendation of earlier DPC, the officer has not made any improvement. On due consideration of the ACR records, special performance report, etc., the DPC did not find Shantanu Mazumdar AO (applicant) fit for completion of his probation even upon his completing the period doubled than the normal probation period prescribed. It was observed that no further extension beyond four years in his case can be given under rules. Therefore, DPC recommended for his discharge from the service which was accepted by the competent authority and the applicant was discharged from service vide impugned order dated 25.3.1997 (Annexure--10).

15. The above facts of the case show that the case of the applicant had been considered in detail with reference to his ACRs as well as special performance report by a duly constituted DPC which recommended for his discharge from the service. It may be pointed out that a DPC has been given specific role under the rules. It is an expert body and its recommendations have to be given due weightage unless it can be proved that the recommendation of DPC have been made with mala fide intention or the same are against any provision of law. In the instant case, we do not find any such things.

4. From the aforesaid findings, it is evidently clear that the Tribunal has committed error of record in holding that the petitioner failed to complete the probationary period satisfactorily. The Tribunal further committed error of law in holding that even show cause notice was not required for terminating the services of the petitioner on the ground that in terms of the letter of appointment failure to complete the period of probation satisfactorily will render the applicant liable to be discharged from service.

5. Before coming to the instant case, I would like to discuss some of the decisions where principles have been laid down by the Supreme Court.

6. In the case of V.P. Ahuja Vs. State of Punjab and Others, , the fact was that the appellant was appointed as Chief Executive in the establishment of Punjab Cooperative Cotton Marketing & Spinning Mills Federation Limited by order dated 29.9.98. One of the terms of his appointment was that he would be on probation for a period of two years which could be extended further at the discretion of the Management. His services were terminated by order dated 2.12.1998 on the ground that he failed in the performance of his duties administratively and

technically. The order was challenged before the High Court in writ petition which was dismissed. The matter ultimately came to the Supreme Court. While allowing the appeal, the Supreme Court observed as under:

7. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice.

8. The affidavits filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular inquiry and giving an opportunity of hearing to the appellant.

9. The entire case-law with respect to a "probationer" was reviewed by this Court in a recent decision in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences*. This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the face of it.

7. In the case of *Karnataka State Road Tpt. Corporation and Another Vs. S. Manjunath*, the Supreme Court after discussing the earlier judgment held as under:

9. The law on the subject has been varying, depending upon the peculiar pattern of the service rules/regulations concerned and the scheme underlying the same in spite of more than one Constitution Bench judgment of this Court declaring the general and basic principles governing the rights of a probationer. There was always a keen tussle between the employer and employee in the application of those principles to individual or class or category of cases.

10. This Court had an occasion to review, analyse critically and clarify the principles on an exhaustive consideration of the entire case-law in two recent decisions reported in *Dayaram Dayal* case and *Wasim Beg* case. One line of cases has held that if in the rule or order of appointment, a period of probation is specified and a power to extend probation is also conferred and the officer is allowed to continue beyond the prescribed period of probation, he cannot be deemed to be confirmed and there is no bar on the power of termination of the officer after the expiry of the initial or extended period of probation. This is because at the end of probation he becomes merely qualified or eligible for substantive permanent appointment. The other line of cases are those where even though there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The Constitution Bench which dealt with the case reported in *State of Punjab v. Dharam Singh* while distinguishing the other line of cases held that the presumption about continuation, beyond the period of probation, as a probationer stood negated by the fixation of a maximum time-limit for the extension of probation. Consequently, in such cases the termination

after expiry of the maximum period up to which probation could be extended was held to be invalid, inasmuch as the officer concerned must be deemed to have been confirmed.

8. In the case of Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another, the Supreme Court laid down the principle and held as under:

34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry. In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive. These are obviously not cases where the employer feels that there is a mere cloud against the employee's conduct but are cases where the employer has virtually accepted the definitive and clear findings of the enquiry officer, which are all arrived at behind the back of the employee -- even though such acceptance of findings is not recorded in the order of termination. That is why the misconduct is the foundation and not merely the motive in such cases.

9. In order to find out whether the impugned order of discharge of the petitioner from service is punitive and stigmatic one or a discharge simplicitor, it is worth to consider here some of the important facts. The petitioner completed the probation period of two years on 16.12.1994. After completion of the probation period, petitioner continued in service. It was only in March, 1996, respondent vide letter dated 30.3.1996 extended probation the probation period for one year upto 14.12.1995. In other words, after extended period of one year on 14.12.1995, petitioner continued in service. Here I must point out that reason for giving retrospective extension of probation period upto 14.12.1995 in the year 1996 is best known to the respondents. Be that as it may, before issuing the aforesaid letter of extension of probation period, petitioner was served with a charge memo dated 25.1.1996. By the said memo, petitioner was directed to show cause as to why disciplinary action should not be initiated against him in respect of the said charges. For better appreciation, the letter dated 25.1.1996 is quoted herein below:

Show Cause Notice

It has been brought to the notice of the undersigned that Shri S. Mazumdar, while functioning as Admn. Officer at C.H.E.S., Ranchi, committed financial irregularities, misbehaved with the superiors and staff at the station. In the preliminary enquiry held into the said charges it is established that

1) Shri.S. Mazumdar had initiated action for procurement of Gestetner Rotary Duplicator Machine at a cost of Rs. 26,776/- without the approval of the competent authority viz. Director, IIHR, Bangalore. The purchase of duplicating

machine was not approved in the EFC of C.H.E.S. Ranchi. The purchase procedure viz, calling quotation, ascertaining DGS&D rate and proprietary item certificate were not followed in this case. He had obtained the signature of the head of station on the FVC bill for making payment to the firm.

2) Shri.S.Mazumdar is in the habit of shouting loudly at staff members during office hours thereby distracting the attention of others and causing dislocation of functioning of library section etc.

3) Shri D. Benerjee, Jr. Steno who had come to C.H.E.S., Ranchi to attend the enquiry committee from 15.3.95 to 18.3.95 was retained at CHES Ranchi w.e.f. 19.3.95 to 27.3.95 and assigned the work of processing of store purchase with a malafide intention.

4) Shri. S. Mazurndar is in the habit of visiting local market for purchase very often, causing pendency and dislocation of work at the office.

5) Shri S. Mazumdar as Admn. Officer had allowed frequent purchase of stationery items out of imprest in contravention of rules.

As Shri S. Mazumdar, Admn. Officer had flouted the rules and acted on his own by his acts of financial irregularity, misbehaviour etc., he is hereby directed to show cause as to why disciplinary action should not be initiated against him in respect of the above said charges. His reply in this regard should reach the undersigned within 15 days from the date of receipt of this notice.

Sd/- (I.S. Yadav) Director

10. Petitioner submitted detailed show cause but enquiry was conducted behind the back of the petitioner. In the discharge memo dated 25.3.1997, discharge/removal of the petitioner from the service was on the ground inter alia that the performance of work and conduct of the petitioner was not satisfactory. One of the charges was that the conduct of the petitioner in transacting the business of the company was not satisfactory.

11. It would also be useful to mention here that another office order dated 9.4.1996 was issued by the respondents for conducting impartial enquiry, two additional members were added in the enquiry committee and the said committee submitted enquiry report before the disciplinary authority behind the back of the petitioner. It is, therefore, clear that enquiry was conducted with regard to the charges including the conduct of the petitioner which reflect from the grounds mentioned in the impugned order of discharge. In my opinion, therefore, the enquiry submitted by the committee with regard to conduct of the petitioner is the foundation of order of his discharge.

12. Admittedly, even after the completion of probation period of two years on 16.12.1994, the petitioner continued in service and further completed one year on 14.12.1995 and after completion of further one year, the respondent extended the period of probation for one year i.e. upto 14.12.1995 vide memo

dated 30.3.1996. Before issuing this letter of extension of probation period, the respondent in the same month i.e. vide memo dated 18.3.1996 proceeded with the enquiry. At the same time, in July, 1996 petitioner and other officers were transferred and petitioner was posted as Administrative Officer in the Central Research Centre, Gujarat. Surprisingly, the impugned order of discharge was issued by the respondent without any notice to the petitioner on the basis of enquiry conducted behind the back of the petitioner. The sequence of the developments amply proves that the action of the respondent is illegal, mala fide and vindictive. It is not a case of discharge simplicitor during or on completion of probation period. The impugned order, therefore, cannot be sustained in law.

13. This application is, therefore, allowed and the impugned order passed by the Tribunal as also the impugned order of discharge passed by the respondents are set aside.