
(2006) 07 PAT CK 0026
In the Patna High Court
Case No : C.W.J.C. No. 10765 of 2004

Union of India (UOI)

APPELLANT

Vs

Sri Prakash Kumar Gajre and Others

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Citation : (2006) 07 PAT CK 0026

Final Decision : Allowed

Judgement

Ramesh Kumar Datta, J.—The present writ application has been filed for setting aside the order dated 20.2.2004 passed by a Division Bench of the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 286 of 2001, by which the Tribunal has allowed the said case and quashed the order dated 11/13.4.2000 passed by petitioner No. 2, Director, Central Bureau of Investigation and also quashed the order No. 95 of 2000 dated 4.5.2000 issued by the Superintendent of Police, Central Bureau of Investigation (petitioner No. 3) terminating the service of respondent No. 1, Sri Prakash Kumar Gajre and the Tribunal further directed that the applicant (Respondent No. 1) would be put back in duty with all consequential benefits.

2. Respondent No. 1 filed the aforesaid original application challenging his termination order from the post of Public Prosecutor by order dated 11/13.4.2000 issued by the Director, C.B.I, and office order No. 95/2000 dated 4.5.2000 issued by the Superintendent of Police, C.B.I., Patna. The case of the applicant (respondent No. 1) is that he was appointed as Public Prosecutor on the recommendation of the U.P.S.C. on 30.6.1992. He joined his post on 2.11.1992 at Calcutta and subsequently was transferred to Patna in July, 1996. However, no confirmation order was received by him nor an order regarding extension of his probation was received by him. In 1997 the then Deputy Legal Advisor on account of grudge and ulterior motive started recording adverse remark against him and subsequently respondent No. 1 received a memo dated 13.4.1998 extending his period of probation for six months from 7.2.1998. On 24.3.2000,

he received some adverse report from the said Deputy Legal Advisor for the period 6.7.1997 to 31.12.1997 and was asked to make representation against the same. He was again communicated another adverse report on 24.3.2000 for the period from 1.1.1998 to 7.6.1998, The third adverse report of the same date, namely, 24.3.2000 for the period from 8.6.1998 to 31.12.1998 was also communicated to him. Before he could send his reply to the same, he received the termination order on 4.5.2000 under proviso to Sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965 along with an amount of his one month's pay plus allowance. His representation to the Secretary, Personnel, Government of India was not acted upon and, thus, he approached the Tribunal by filing O.A. No. 286/01.

3. The case of respondent No. 1 was mainly argued before the Tribunal on two grounds. Firstly, his service would be deemed to have been confirmed with the passage of time, because his probation had come to an end by the application of law. The second ground raised by respondent No. 1 was that the impugned order of termination was in violation of the provisions of Article 311(2) of the Constitution of India as he could not have been terminated from his service without being given a reasonable opportunity of hearing after complying with the principle of natural justice.

4. The petitioners of this writ petition also filed their written statement before the Tribunal. In the said written statement, the stand of the petitioners was that respondent No. 1 was appointed as Public Prosecutor in the C.B.I. on 2.11.1992 on probation for a period of two years. In the offer of appointment, it was clearly mentioned that the probation period may be extended at the discretion of the competent authority; during the period of probation, his appointment may be terminated without notice and without assigning any reasons thereof by the competent authority at any time by a month's notice by either side, or by making payment of pay and allowance for the period of notice the appointment may be terminated forthwith also. The further case of the petitioners is that the confirmation of probation was not automatic but it has to be followed by formal order and that there is specific Government instruction that until the issue of specific order of satisfactory completion of probation, such probationer shall not be deemed to have completed probation. It was stated in the written statement that respondent No. 1's case for completion of probation was taken up in time but in the absence of submission by him of resume of work despite reminder the same could not be finally considered. Further in 1993, he was given adverse remarks but his A.C.R. could not be made available to the Departmental Promotion Committee because the appellate authority had not settled the said adverse remark. When the A.C.R. became made available in July, 1997, his case was placed before the D.P.C. which did not consider him fit for completion of satisfactory probation and recommended for extension of probation twice; firstly up to 6.2.1998 and secondly up to 6.8.1998. The further case of the petitioners is that the performance of respondent No. 1 remained unsatisfactory and ultimately on recommendation of the D.P.C. the Director, C.B.I., being appointing

authority approved the termination of his service forthwith in terms of his appointment letter by-order dated 13.4.2000 and consequential order was passed by the S.P. C.B. I, A.C.B., Patna by office order No. 95 dated 4.5.2000.

5. The stand of the petitioners before the Tribunal was that in view of the specific conditions "in his appointment letter, the probation of the petitioner would be deemed to have been continued and there would be no deemed confirmation. It was their further case that in such circumstances, there was no requirement of following the provisions either Article 311(2) of the Constitution or for complying with the principle of natural justice.

6. On a consideration of the case of the respondent No. 1 and the present petitioners, the Tribunal allowed the application holding that after the expiry of the probationary period, the probationer is deemed to be confirmed unless probation is extended and the same not having been done, the applicant would be deemed to have been confirmed. It was further held by the Tribunal that the order terminating the officer on probation on unsatisfactory work is stigmatic and requires enquiry and opportunity of hearing and only because the appointment letter has given such an overriding authorisation to the respondent to terminate the services of an officer without giving a mandatory notice of show cause without following the principle of natural justice the legal relief available to the respondent cannot be denied.

7. For the said reasons the original application was allowed by the Tribunal and respondent No. 1 was directed to be put back in duty with all consequential benefits.

8. Mr. Rakesh Kumar, learned Counsel appearing for the C.B.I. has reiterated the stand taken by the Department before the Tribunal and submitted that the Tribunal contrary to * well established principle of law has wrongly held that the applicant's service would be deemed to have been confirmed unless the probation is extended. It is further submitted by the learned Counsel that since the appointment letter itself provided for termination of the temporary appointment at any time before or after the probation, therefore, the impugned order cannot be assailed on the ground of violation of the principle of natural justice.

9. Learned Counsel for respondent No. 1, however, placed reliance on the cases cited on his behalf before the Tribunal, In support of his above stand, in this regard, he referred to the case of V.P. Ahuja Vs. State of Punjab and Others, and further upon a decision in the case of State of Punjab Vs. Dharam Singh, as well as the judgment of the apex court in the case of Karnataka State Road Transport Corporation v. S. Manju Nath 1998 (2) SLJ 80. On the basis of the said cases, learned Counsel tried to justify the judgment and order of the Tribunal that Respondent No. 1 would be deemed to have been confirmed as a probationer for the period of probation in the absence of any order extending the said period and further that there has been a violation of the principle of natural justice in his

case.

10. The law relating to the confirmation of probation or deemed confirmation of probation as well as the termination of service of probationer has now been well laid down by several Constitution Bench and other judgments of the Supreme Court. To examine the validity of such orders of termination what has to be looked into is either the terms and conditions contained in the appointment letter or in the rules of service applicable to the case. However, it has also to be seen as to the contents of the order of termination whether it is stigmatic or not.

11. Annexure 2/1 to the writ petition is the letter of appointment of respondent No. 1, the relevant part of which for the decision of this case is in the following terms.

(1) The appointment is temporary and his case for confirmation will be considered in accordance with the rules in force, subject to the availability of a permanent post;

(ii) He will be on probation for a period of 2 years from the date of his appointment. The probation period may be extended at the discretion of the competent authority. During the period of probation his appointment may be terminated without notice and without assigning any reason therefore by the appointing authority. After the period is over the temporary appointment may be terminated at any time by a month's notice on either side. The appointing authority however reserves the right to terminate the appointment forthwith or before the expiration of the stipulated period of one month's notice by making payment of pay and allowances for the period of the unexpired portion thereof.

12. The order of termination passed by the Director, C.B.I. and the consequential orders passed by the Superintendent of Police, C.B.I., Patna dated 13.4.2000 and 4.5.2000 are contained in Annexures 9 and 10, they are in the following terms:

In pursuance of the proviso to Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I.R.K. Raghavan, Director, CBI hereby terminate the services of Shri Prakash Kumar Gajre, Public Prosecutor forthwith and a sum equivalent to the amount of his one month pay plus allowances at the same rates at which he was drawing immediately before the termination of his service is being paid by Bank Draft simultaneously.

In pursuance of CBI HQ order dated 13.1.2000 vide file NO. DPAD5/2000/01654/11/12/96-ADV dated 13.4.2000, the services of Sri Prakash Kumar Gajre, Public Prosecutor, CBI, ACB, Patna is hereby terminated forthwith and a sum equivalent to the amount - of his one month pay plus allowances at the same rates at which he was drawing immediately is being paid vide D.No. U/1-167516 dated 4.5.2000 for Rs. 14,506/-(Rupees fourteen thousand five hundred six) only.

13. So far as the condition given in the letter of appointment is concerned, it clearly provides for a probation period of two years from the date of

appointment, which may be extended at the discretion of the competent authority and it was further provided that during the period of probation, the appointment may be terminated without notice and without assigning any reason by the appointing authority.

14. The law regarding probation and deemed completion of the same has thoroughly been analyzed on the basis of the previous decision of the Supreme Court in the case of Dayaram Dayal Vs. State of M.P. and another [OVERRULED], . On a consideration of the previous rulings of various Benches, including the several Constitution Benches of the Supreme Court it was held in the said decision that there is no conflict between two sets of decisions of the apex court and it depends on the condition contained in the order of appointment and the relevant rules that are applicable. It was held in the said case that 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 specified and the officer is continued 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 period of probation. This proposition was laid down in at least three Constitution Benches of the Supreme Court in the cases of Sukhbans Singh Vs. State of Punjab, , G.S. Ramaswamy and Others Vs. Inspector-general of Police, Mysore, and State of Uttar Pradesh Vs. Akbar Ali Khan, . In all these cases, the Supreme Court clearly laid down the law that unless the order of appointment or the rules said that at the end of the probationary period, if no order was passed, the officer is to be deemed to have been confirmed, the officer continued to be on probation. Similarly in the case of Dhanjibhai Ramjibhai Vs. State of Gujarat, where the period of probation fixed under the Rules was two years and there was also provision for extension but no maximum was prescribed and the termination was after the expiry of two years period of probation, a three Judges Bench of the Supreme Court held that there was no automatic confirmation at the end of two years and that the termination after two years was valid.

15. In the case of Dayaram Dayal (supra) the apex court referred to the other line of cases in which while there was 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. One such case came before the Constitution Bench in the State of Punjab Vs. Dharam Singh, (which has been relied upon by respondent No. 1). In the said case the relevant rules provided initially for one year probation and then for extension thereof subject to a maximum of three years and the petitioner in that case had been terminated after the expiry of the extended period of three years probation without any departmental inquiry. In such a situation the Constitution Bench held that the other line of cases was clearly distinguishable as they did not provide for maximum period of probation while in the case of State of Punjab v. Dharam Singh (supra) presumption of his continuing as a probationer was negated by the fixation of a maximum time- limit for the extension of probation and he

would be deemed to have been confirmed at the end of the said maximum period. Thus, his service could not be terminated without taking a proper departmental enquiry. The said decision has been followed in a large number of other cases also in all of which the maximum period of extension of period was provided. In the case of Dayaram Dayal (supra), the apex court also considered a third line of cases like Samsher Singh Vs. State of Punjab and Another, in which although a maximum of three years period was prescribed for continuance of probation yet since the rule provided for specific confirmation before the probation can be completed, it would be deemed that the probation stood extended in such cases.

16. On consideration of the aforesaid proposition laid down by the apex court and the distinction made between two line of cases, it is evident that the present case is governed by the line of cases starting from Sukhbans Singh (supra) and not in the case of State of Punjab v. Dharam Singh (supra) In the present case the letter of appointment does not provide for a maximum period beyond which the probation cannot be extended. It clearly states that the period may be extended at the discretion of the competent authority.

17. In that view of the matter, unless the specific order was passed by the authority confirming the services of Respondent No. 1 it cannot be deemed that the period of probation is automatically extended.

19. In the said circumstances, respondent No. 1 has to be treated as continuing on probation on the date when the order of termination was passed by the Director, C.B.I, and the consequential order passed by the Superintendent of Police, C.B.I., Patna.

20. On the second issue as to whether the requirement of complying with the principle of natural justice arose in the present matter, respondent No. 1 has placed reliance on the case of V.P. Ahuja Vs. State of Punjab and Others, . So far as the said case is concerned, the apex court on a reading of the order of termination has come to the conclusion that it was stigmatic since the order recorded that he failed in performance of his duty technically. For the said reason, the Supreme Court held that such an order, which was on the face of it stigmatic could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant. The said decision was rendered relying upon the law laid down by the Supreme Court in the case of Dipti Prakash Banerjee Vs. Satendra Nath Bose National center for Basic Sciences, Calcutta and Others, . In Dipti Prakash Banerjee case (supra) the Supreme Court analysed the previous decision on the point as to under what circumstances, the probationer's termination can be said to be founded on misconduct and in what circumstances, it can be said that the allegations were only motive for passing the order of termination and; if it was found that the allegations were only a motive for termination then no regular departmental enquiry was required and a simple order of termination would be sufficient whereas if the termination of a probationer's services are founded on misconduct or the order of termination

contained an express stigma then without a regular departmental enquiry a simple order of termination is to be treated as founded on the allegations and will be bad.

21. In the present case from the orders of termination dated 13.4.2000 and 4.5.2000 it is evident that no stigma is contained in the same and they are simple orders of termination without making any allegation upon respondent No. 1.

22. Thus, the order on the face of it cannot be held to be stigmatic nor there is anything contained in the order by referring to which a stigma can be imputed upon respondent No. 1. In Dipti Prakash Banerjee case (supra) the Supreme Court held that if no enquiry was held and no findings were arrived at and the employer was not inclined to conduct an enquiry but at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad; further, similar would be the position if the employer did not want to enquire into the truth of allegations because of delay in regular departmental proceeding or he was doubtful about securing adequate evidence; in such circumstances, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

23. The present case is squarely covered by the law laid down by the apex court in the case of Dipti Prakash Banerjee (supra) and the said order is neither founded upon misconduct nor stigmatic and therefore, cannot be held to be invalid.

24. Thus on a consideration of the facts and the legal position as discussed above it is evident that the Tribunal has not correctly applied the legal position with respect to probationer and has wrongly held that the respondent No. 1 would be deemed to have been confirmed and that a show cause notice was mandatory and his service could not be terminated without complying with the principle of natural justice.

25. In the result, this writ petition is allowed. The order dated 20.2.2004 of the Central Administrative Tribunal, Patna Bench, Patna passed in O.A. No. 286/01 is set aside and the orders dated 13.4.2000 passed by the Director, C.B.I and 4.5.2000 passed by the Superintendent of Police, C.B.I., Patna are declared as legal and valid. However, in the facts and circumstances of this case, there shall be no-order as to costs.

Ram Nandan Prasad, J.

25. I agree.