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(2008) 03 GAU CK 0027

Gauhati High Court

Case No: None

Rajendra Singh	APPELLANT
Vs	
Union of India (UOI) and Others	RESPONDENT

Date of Decision: March 5, 2008

Citation: (2008) 4 GLT 113

Hon'ble Judges: B.K. Sharma, J

Bench: Single Bench

Final Decision: Allowed

Judgement

B.K. Sharma, J.
This writ petition was filed by one Shri Rajendra Singh making a grievance against the order dated 15.7.2004 (Annexure- 2 to the writ petition) by which he was reverted from the post of Administrative Officer (Group-A Gazetted) to that of Assistant Administrative Officer (Group-B) with effect from 19.8.2003. The petitioner-said Shri Rajendra Singh expired on 24.10.2006 while in service and as such, the writ petition is being pursued by his wife Smti. Maya Devi, whose name has been substituted in place of the original petitioner vide order dated 21.1.2008.

2. The petitioner was promoted as Civilian Officer Grade-H by Annexure-1 notification dated 4.2.1997. In the order of promotion, it was stated that he would be on probation for aperiod of two years from the date of assumption of charge of the promotional post.

3. From the materials on record, it appears that his period of probation was extended from time to time, the last extension being up to 18.8.2003 by order dated 30.10.2002. By the time, the period of probation was extended up to 18.8.2003, the petitioner had put on more than 6 years of service in the promotional post.

4. Placing reliance on the Annexure-3 order dated 10.8.1991 prescribing the maximum period of probation, it is the case of the petitioner that his period of probation could not

have been extended beyond 4 years.

5. As per the aforesaid order dated 10.8.1998, the period of probation is for 2 years, extendable on year to year basis to a maximum period of 4 years as per Article 202 of the C.S.R. Vol-I. The order further stipulates that the extension of the period of probation is required to be conveyed to the probationer concerned well before completion of 2 or 3 years service, as the case maybe, otherwise the individual will be deemed to have successfully completed the period of probation.

6. The aforesaid order further emphasizes that the issuance of extension orders after expiry of extended period of probation i.e. 4 years will not have any legal validity as per the views expressed by various Courts. The said order further emphasizes that if an incumbent remain? in service even after 4 years, it is accepted that he has .successfully completed, the period of probation under deemed clause.

7. As noted above, the period of probation of the petitioner was extended beyond stipulated period of 4 years. By order dated 30.10.2002, it was extended up to 18.8.2003. The petitioner continued in the promotional post beyond 18.8.2003 without, however, any order of extension. The period of probation was also not extended beyond 18.8.2003. However, the respondents passed the impugned order dated 15.7.2004 nearly after one year of last extension of the period of probation (18.8.2003) reverting the petitioner to his former post of Assistant Administrative Officer (Group-B) from that of the promotional post of Administrative Officer (Group-A Gazetted). Such reversion was made effective retrospectively i.e. from 19.8.2003, unmindful of the fact that by the time, the impugned order dated 15.7.2004 was passed, the petitioner was occupying the promotional post.

8. I have heard Mr. A.K. Dutta, learned Counsel for the petitioner as well as Mr. H. Rahman, learned Assistant Solicitor General of India assisted by Ms. P. Khatun.

9. While Mr. Dutta, learned Counsel for the petitioner submits that the petitioner having completed the maximum period of probation, he should be deemed to have been confirmed in the promotional post. Mr. Rahman, learned ASG of India submits that in absence of any express order confirming the services of the petitioner in the promotional post the petitioner cannot claim automatic confirmation. Mr. Dutta, learned Counsel for the petitioner has placed reliance on the decision of the Apex Court reported in Om Parkash Maurya Vs. U.P. Cooperative Sugar Factories Federation, Lucknow and Others,

10. I have given my anxious consideration to the submissions made by the learned Counsel for the parties as well as materials on record. The fact that the maximum period of probation is 4 years, has not been disputed by the respondents. As noticed above, the Annexure-3 order dated 10.8.1991 prescribes maximum period of 4 years as a period of probation coupled with the duty of the employer to intimate the incumbent well before completion of 2 or 3 years of service, as the case may be, about extension. The said order also stipulates about the deemed confirmation on successful completion of 4 years

of service. It also stipulates that any extension after expiry of the extended period of probation i.e. 4 years will have no legal validity.

11. The petitioner was promoted by order dated 4.2.1997 and he completed 4 years of service in the promotional post in February, 2001. However, his service was extended from time to time and the last extension was up to 18.8.2003 by order dated 30.10.2002.

12. After the aforesaid extension up to 18.8.2003, there was no further extension nor any intimation was given to the petitioner, as was required under the aforesaid order. Thereafter, the authority passed the impugned order dated 15.7.2004 (Annexure-2 to the writ petition) retrospectively reverting the petitioner to the post of Assistant Administrative Officer (Group-B) from the promotional post of Administrative Officer (Group-A Gazetted). Such retrospective reversion is wholly against the law.

13. Apart from the above, there are materials on record to suggest that the petitioner in fact, rendered sincere and devoted service. However, on this or that reason, his period of probation was extended from time to time with the last extension up to 18.8.2003. Thereafter, there was no extension of period of probation till the issuance of the impugned order dated 15.7.2004 by which the petitioner was reverted to the lower post and that too, with retrospective effect.

14. In Om Prakash Maurya (supra), the Apex Court in somewhat similar circumstances held that the probationer involved in that case, should be deemed to have been confirmed on expiry of maximum period of probation. It was held that where appointment and promotion is made on probation for a specific period and the employee is allowed to continue in the post after expiry of probationary period without any specific order of confirmation, he should be deemed to have been confirmed and, therefore, cannot be reverted to a lower substantive post treating him to be on probation.

15. In the instant case, the petitioner continued in the promotional post for long more than 7 years as against the specific period of 4 years. Further, his probation period was not also extended beyond 18.8.2003 and yet, he was reverted to his substantive post by the impugned order dated 15.7.2004.

16. In view of the above, this writ petition succeeds and the impugned order dated 15.7.2004 is set aside and quashed.

17. Since the petitioner has already expired, his wife shall now be entitled to consequential benefits.

18. Writ petition is allowed leaving the parties to bear their own costs.