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HIGH COURT OF DELHI AT NEW DELHI

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LPA No.393/2000

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Date of Decision: 28th March, 2008

A.K.GAJWANI

.....APPELLANT

Through: Ms.Maninder Acharya, Advocate.

Versus

AIRPORTS AUTHORITY OF INDIA

.....RESPONDENT

Through: Mr.Rajan Sabharwal with Ms.Seema
Bhaduriya, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers be allowed
to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

DR. MUKUNDKAM SHARMA, CJ

1. The present appeal is filed by the appellant, being aggrieved by order dated 27th January, 2000 passed by the learned Single Judge, whereby the writ petition filed by the appellant was dismissed.

2. The appellant joined the respondent Authority on 19th October, 1977 as Assistant Engineer and was posted in Delhi. By order dated 20th December, 1982 the appellant was promoted to the post of Executive Engineer (Civil) but on ad hoc basis, in the pay scale of Rs.1250-1700. On 4th March, 1987 while the appellant was working as Executive Engineer he was transferred to Madras by the respondent Authority. On

20th July, 1987 the appellant was directed to appear before the selection committee for interview for the purpose of regularising his service in the cadre of Executive Engineer (Civil) and, thereafter, on 4th November, 1987 the appellant was promoted as Executive Engineer on regular basis and placed on probation for a period of one year.

3. While the appellant was posted at Madras, in May, 1988 the appellant took 15 days leave commencing from 7th May, 1988 to 21st May, 1988 for the purpose of visiting his mother who was staying in Delhi. After coming to Delhi, the appellant applied for extension of the leave which request was rejected, but as the request was again made on the ground that the leave be granted and extended due to death of the appellant's mother, leave was granted upto 18th June, 1988. Even after the expiry of the said extended leave period, the appellant did not report for duty and instead requested for another extension upto 4th July, 1988 on the ground that his son was sick. The said request was rejected and he was asked to join his duty immediately. The appellant instead of complying with the said direction, made another request for extension of leave upto 16th July, 1988, which was denied. Without paying any heed to the said rejection of leave, the appellant informed the respondent authority through telegram that due to unavoidable reasons he would be joining only on 1st August, 1988, which the appellant unilaterally further extended to 16th August, 1988 without any

approval. In the meantime, a memo dated 2nd August, 1988 was issued to the appellant directing him to join duties by 5th August, 1988 as he had unauthorisedly remained absent since 19th June, 1988. It was clearly stated in the said memo that if the appellant did not join his duty by 5th August, 1988 an action would be contemplated against him according to the rules for such unauthorised absence.

4. As the appellant did not join by 5th August, 1988, a memo dated 14th September, 1988 was issued informing the appellant that the respondent Authority proposes to take action against him under Regulation 30 of IAAI Employees (Conduct, Discipline and Appeal) Regulations, 1987 and he was directed to submit his representation within 15 days of the receipt of the said memo. A response to the said memo was filed on 28th September, 1988. By office order dated 21st November, 1988 the appellant was reverted to his substantive post of Assistant Engineer on the ground of unsatisfactory performance during the probation period and also on the ground of unauthorised absence from his place of posting. The competent authority, on consideration of the reply filed by the appellant to the memo dated 14th September, 1988, found the same unsatisfactory and by order dated 21st March, 1989 imposed the penalty of censure on the appellant stating that though the misconduct committed by the appellant was of a serious nature, but keeping in view the fact that the appellant had already been

reverted to the post of Assistant Engineer due to his unsatisfactory performance during the period of probation, the competent authority had taken a lenient view and had ordered imposition of penalty of censure only.

5. Aggrieved by the aforesaid, the appellant challenged the orders dated 21st November, 1988 and 21st March, 1989 before the learned Single Judge by filing the writ petition in the year 1991. The said writ petition was filed near about two and half years from the date of the order of reversion and near about three years from the date of the order imposing the penalty of censure.

6. On perusal of the records and after hearing the learned counsel appearing for the parties, the learned Single Judge dismissed the writ petition by order dated 27th January, 2000, holding that the contention of the appellant that the order dated 21st November, 1988 was punitive in nature cannot be accepted and the respondent Authority was perfectly justified in declining to grant leave to the appellant and subsequently passing the aforesaid orders.

7. Aggrieved by the aforesaid order of the learned Single Judge, the appellant preferred the present appeal on which we have heard the learned counsel appearing for the parties and have also perused the records.

8. It was contended by the learned counsel appearing for the

appellant that the respondent Authority has imposed two penalties, namely, the minor penalty of censure and the major penalty of reversion, for the alleged single charge of unauthorised absence from duty. The appellant has stated that he had already worked as Executive Engineer for six years from the date of his initial appointment and due to continued officiation, he should be deemed to have been confirmed in the said post and therefore he could not have been reverted. It was also contended by the appellant that no opportunity was granted to him to meet the charges levelled against him, on the basis of which he had been reverted.

9. On the other hand, the learned counsel for the respondent submitted that the appellant along with four others was promoted to the temporary post of Executive Engineer and placed on probation for a period of one year as per the IAAI (General Conditions of Service) Regulations. Relying on Clause 12(3) of the said Regulations it was submitted that an employee promoted from a lower post to a higher post was liable to be reverted to the lower post, if his performance during the period of probation was not found to be satisfactory or upto the standard. It was denied that the appellant had been given two punishments for the same offence as no major penalty was imposed on the appellant, and also the appellant was not reverted or lowered in rank on account of disciplinary proceedings and rather, he was reverted

due to unsatisfactory performance during the probation period which was in consonance with the IAAI Rules. It was also submitted that as per Clause 31 of the Regulations, unauthorised absence of this kind apart from resulting in loss of pay and allowances would also constitute a break in service entailing forfeiture of past service, but in the case of the appellant the respondent Authority had taken a lenient view in imposing only a penalty of censure. Next, it was submitted that the appellant had wrongly alleged that the extension of leave was taken on account of his son's illness, as the medical certificate submitted by the appellant clearly shows that the ailment was of a minor nature and not such that he could not move to Madras.

10. The appellant herein was appointed to the post of Executive Engineer on a temporary basis and placed on probation for a period of one year. There are ample number of decisions, both by this Court and also by the Supreme Court, laying down and reiterating again and again that the performance of a person who is appointed on probation could be assessed and reviewed during the period of probation, so as to take a decision as to whether he should be continued on probation or confirmed in the post or should be reverted back to his substantive post due to his unsatisfactory performance. [See: Municipal Committee, Sirsa v. Munshi Ram, reported in (2005) 2 SCC 382 and Krishnadevaraya Education Trust and Another v. L.A. Balakrishna

reported in (2001)9 SCC 319]

11. In order to appreciate the contentions raised by the learned counsel for the parties, we have also perused the original records placed before us. A reference to the records indicates that the performance of the appellant in the promoted post of Executive Engineer during the period of his probation was found to be unsatisfactory and the said fact was brought to his notice. Despite such warning there was no improvement in the performance of the appellant, which fact is also disclosed from the original records placed before us. We find from the original records that by letter dated 12th July, 1988 of the Executive Director (Personnel) IAAI, the contents of the PAR for the year 1987 were communicated to the appellant, wherein after pointing out the weak points which were adverse in nature, the appellant was advised to improve upon his work performance in the areas where he had been found weak. We also find various other communications in the records addressed to the appellant requiring him to improve his performance, and also stating that it would not be possible for the authority to continue his probation unless a very remarkable improvement is shown in his work. As there was no improvement in the appellant's performance during the said period of probation, therefore, the right of the respondent to revert back the appellant to the post of Assistant Engineer cannot be questioned and the action taken therefor by the

respondent cannot be held to be in any manner either punitive or illegal or without jurisdiction.

12. Thus, the contentions of the appellant that the respondent Authority had imposed two penalties and also that no inquiry was conducted before his reversion, have no merit. The reversion of the appellant during the period of probation cannot be said to be a punishment of any kind. Reference in this regard can also be made to the decision of the Supreme Court in the case of Union of India v. P.S. Bhatt reported in (1981) 2 SCC 761, wherein referring to an earlier decision in the case of Oil and Natural Gas Commission v. Dr. Md. S. Iskender Ali reported in (1980) 3 SCC 428, it was held that even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the authority to terminate the service of the employee on probation, even then such termination cannot be termed as penalty or punishment. So far as the question of inquiry is concerned, Clause 12(3) of the IAAI (General Conditions of Service) Regulations empowers the respondent to revert an employee if his work is found to be unsatisfactory during the period of probation. In the case of Kunwar Arun Kumar v. U.P. Hill Electronics Corporation Ltd & Others reported in (1997) 2 SCC 191 it was held by the Supreme Court that during the period of probation, the authorities are entitled to assess the suitability of the candidate and if it is found that the candidate is not

suitable to remain in service, they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation. For this, the appointing authority has to look into the performance of the work and duties during the period of probation, and if they record a finding that during that probation period the work and performance of the duties were unsatisfactory, they are entitled to terminate the service in terms of the letter of appointment without conducting any inquiry.

13. So far as the issue with regard to imposition of the penalty of censure is concerned, the said action has no relational relevance with the aforesaid order of reversion. The said order of imposition of penalty of censure was passed in the light of completely independent facts and for alleged misconduct of the appellant in unauthorisedly absenting himself from duty. In our considered opinion, the respondent could have imposed a harsher punishment for the aforesaid offence, which was proved from the documents on record. But they choose to impose only the minimum possible penalty on him and, therefore, there cannot be any cause for grievance to the appellant in that regard.

14. An argument was also sought to be made on behalf of the appellant that subsequent to filing of the writ petition, the appellant was denied promotion. It was submitted before us that even before filing of the writ petition on 17th July, 1991, a Departmental Promotion

Committee was constituted for considering cases for appointment to the post of Executive Engineer wherein the appellant's junior was asked to appear for interview, whereas the appellant's request and representation for consideration of his case for promotion was rejected. It was also stated by the appellant that as per the orders dated 24th July, 1991 and 25th September, 1991 issued by this Court though the appellant's name was considered for promotion but the same was kept in a sealed cover, which was not opened even till the date of filing of the present appeal. We find that after passing of the order dated 5th April, 1991 a new cadre of Assistant Executive Engineers, which was created in between the posts of Assistant Engineer and Executive Engineer. The appellant was working against the substantive post of Assistant Engineer. With the creation of the aforesaid cadre of Assistant Executive Engineers, which was created in the month of January, 1993, the appellant was required to be first considered for promotion to the said post. In the year 1994 a meeting of the Departmental Promotion Committee (DPC) was held for selection to the aforesaid cadre of Assistant Executive Engineers, wherein the case of the appellant was considered, but since his case was found to be 'average' he was not promoted to the said post. The next DPC for considering promotion to the cadre of Assistant Executive Engineers was held sometime in the year 1999. In the said selection also the name of the appellant was

considered, and this time he was found to be fit for promotion and, accordingly, he was promoted to the said post effective from 28th June, 1999. After his promotion to the said post of Assistant Executive Engineer, he was finally retired as Assistant Executive Engineer in the year 2002. Considering the entire facts and circumstances of the case, it cannot be said that any step-motherly treatment was shown to the appellant at any stage by the respondent. At least the records which are placed before us do not make out any such case.

15. In this view of the matter, we find no infirmity in the impugned judgment and order passed by the learned Single Judge. There is no merit in this appeal and the same is accordingly dismissed. No costs.

CHIEF JUSTICE

(REVA KHETRAPAL)
JUDGE

28th MARCH, 2008
“V”