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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 7552/2015

Date of Judgment : 11.08.2015

RAMESH KUMAR

..... Petitioner

Through : Sh. Amit Kumar, Advocate.

versus

CMD,DTC AND ANR

..... Respondent

Through : Ms. Latika Chaudhary, Advocate for
Ms. Avnish Ahlawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. By the present petition under Article 226 of the Constitution of India the petitioner has prayed that the order dated 13.08.2012 passed by the Central Administrative Tribunal be quashed and set aside. The petitioner was handed over a letter informing him that his period of probation had not been extended which led to the filing of the OA No.402/2012. An appeal filed by the petitioner to the Appellate authority was also rejected.
2. The petitioner was selected by the Delhi Subordinate Services Selection Board as a Driver with the Delhi Transport Corporation with effect from 21.01.2009. He lost his wife in an accident on 8.01.2009. On 12.10.2010 while returning to his house he felt unwell. He was advised regular treatment and 15 days rest. An application was made by the petitioner seeking 10 days leave. As per the petitioner, since his

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request was not rejected by the Depot Manager, he continued with his treatment and he was discharged on 18.01.2011. The petitioner also claims that when he wanted to join his duty, he was not permitted. The learned counsel for the petitioner submits that the learned Tribunal had failed to take notice that a chargesheet was issued to the petitioner. Thus, his period of probation would automatically come to an end. It is also contended that once the charge sheet was issued it was incumbent upon the respondents to complete the enquiry which would have allowed the petitioner to place his defence and he would have succeeded in showing that he was prevented from joining his duties on account of his illness. Even otherwise, it is contended that the period of probation in the case of the petitioner was only one year and thus, the respondent could not have terminated the services of the petitioner without following the due process and even probationers are entitled to protection. In support of his submission, the learned counsel for the respondent placed reliance on the case of *V.P.Ahuja Vs. State of Punjab and Ors. reported in (2000) 3 SCC 239*.

3. Learned counsel appearing for the respondents submits that the petitioner was on probation at the relevant period. Counsel submits that period of probation was two years which is evident from the appointment letter, copy of which has been placed on record. Secondly, as per the circular dated 04.12.2007, the period of probation has been fixed for two years. Counsel further contends that merely because a chargesheet was issued to the petitioner that by itself would not make the petitioner a regular employee besides the fact that the chargesheet was with respect to a different period of his absence. Counsel further contends that the petitioner remained absent for a

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period of nine months approximately out of which for 44 days he had submitted the medical certificate and for the balance 177 days there was no medical certificate. It is further contended that the aim, objective and purpose of fixing a period for probation is to enable an employer to monitor and assess the conduct of an employee and also take into account the suitability of the employee. It is, thus, contended that having regard to the long unexplained absence of the petitioner during the period of probation was taken into account by the respondent while considering whether he should be confirmed the respondents reached the conclusion that the petitioner was not a fit person for regular employment. It is also contended that the petitioner has not been able to establish the reason for his continued absence from duty.

4. We have heard the learned counsel for the parties and carefully examined the order passed by the Central Administrative Tribunal.
5. The first question which arises for consideration is whether the probation of the petitioner was for a period of one year as has been urged by the petitioner. Para 9 of the letter of appointment of the petitioner reads as under:-

"His appointment is purely temporary. He shall be on probation for a period of 2 years from the date of his temporary appointment, consequent upon his submission of permanent PSV badge. During the period of his probation, his services shall be liable to be terminated at any time without notice and without assigning any reason thereof. He shall be considered as having completed the period of probation satisfactorily only when a notification to this effect is issued by the Competent Authority."

6. The learned counsel for the respondent has placed reliance on the Circular No. Admi (RR Amend)/Dr./07/804 dated 04.12.2007

enclosing therewith an amended copy of the recruitment rules. By the said amendment, the period of probation has been fixed as two years and its relevant part reads as under :

Period of probation, if any
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Two years. The recruits shall be entitled for regular salary as per scale during the probation period.

7. Taking into account the appointment letter and the circular dated 04.12.2007 would leave no room for doubt that the petitioner was a probationer for a period of two years.
8. Learned counsel has placed heavy reliance on the case of ***V. P. Ahuja (Supra)*** in support of his submission that even a probationer is entitled to protection against arbitrary termination and his services cannot be terminated arbitrarily or in a punitive manner without complying with the principles of natural justice. It has also been held that the order of termination cannot be stigmatic or punitive. Reliance has also been placed
9. Reliance has also been placed upon the order of a co-ordinate Bench of learned Tribunal in case of ***Sandeep Kumar Vs. Delhi Transport Corporation and Anr. [OA 3885/2011]*** decided on 20.04.2012, wherein it has been held:-

“6. The admitted position is that the applicant along with others had been appointed vide order dated 03.02.2009, as Driver in DTC and was to be on probation for a period of two years w.e.f. 04.02.2009. The following terms and conditions clearly provided in the appointment orders are also not in dispute : they have submitted an undertaking in form of Affidavit clearly stating that their

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services shall be terminated in case they fail to obtain a PSV badge within 3 months from the date of offer of appointment. They shall be on probation for a period of two years from the date of their appointment consequent upon their submitting permanent PSV badge. The other conditions of their appointment and service shall be those as embodied in the DRTA (Condition of Appointment & Service) Regulations, 1952 as amended upto date and as may be amended hereinafter by DTC. They will also be governed and bound by all other Rules & Regulations framed by DTC hereinafter. They are allotted badge number(s) and pay token number(s) as indicated against their names. They are directed to report to the concerned Depot Manager(s) as per Units indicated above, for further duties. Further, a perusal of Annexure A-11 reveals that the respondents had laid down the following formula for dealing with the Drivers, who are on probation :

"Drivers on Probation (During the first year)

For termination:

- a) *If a driver is involved in a major accident case and is not acquitted by the Court or is considered at fault by the Accident Committee.*
- b) *If a driver is involved in more than three minor accidents or four damage cases.*
- c) *If the number of punishments on courts other than accidents exceeds eighty.*
- d) *If the number of leave without pay exceeds 45 days on grounds other than illness or excess 60 days in all.*

.....
Drivers on Probation (During the second year)

During the extended period of probation, the same is formula as indicted above during the first year will be observed. As the period of probation of the drivers cannot be extended beyond two years, their services will be terminated, if they do not come upto the standard indicated above.

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From the above, it is clear that the Drivers in DTC, who are on probation, and who attract any of the aforesaid, will be liable to termination.

7. In this OA, the respondents have categorically stated that the work and conduct of the applicant was not found satisfactory/upto the mark as he availed as many as 137 leaves without pay, and accordingly the services of the applicant were terminated w.e.f. 28.06.2011 under Clause 9(A)(i) of the DRTA (Conditions of Appointment and Service) Regulations, 1952 vide order dated 28.06.2011."

10. We find that in the facts of the present case the action of the respondent is neither arbitrary, punitive nor the impugned communication is stigmatic. In fact, the conduct of the petitioner of continued absence even during the period of probation which stands established would show that the action of the respondent was not arbitrary. Resultantly, we find no grounds to entertain the present petition. The same is without any merit and is dismissed.
11. Counsel for the petitioner submits that his appeal has not been decided and Ms. Choudhary submits that the appeal has already been decided.

G.S. Sistani
G.S.SISTANI, J

Sangita Bhingra Sehgal
SANGITA BHINGRA SEHGAL, J

AUGUST 11, 2015
SC