

Person appointed on probation can't get confirmed appointment automatically after expiry of probation period

Summary – The High Court of Delhi in a recent case of Anand Kumar, (the Assessee) held that where a person was appointed as a probationer in any post and a period of probation was specified, it did not follow that at end of said specified period of probation he obtained confirmation automatically

Facts

- Pursuant to an advertisement issued by respondent ICA the appellant applied for the vacancy in the post of 'Management Trainee'. He successfully cleared the written test as well as the interview and consequently a letter of engagement was issued to him by the respondent. The appointment letter, predicated the training period as one year from the date of joining. It also provided that in case during the training period, the appellant's performance was not found satisfactory, the training period could be extended by a period not exceeding one year. On successful completion of initial or the extended training period, the appellant was eligible for being considered for the position of 'Executive Officer' in the pay scale of. Rs. 8500-275-13725. This was however subject to conduct and performance review.
- Pursuant to the aforementioned letter of engagement, the appellant joined the office of the respondent and continued to work as a 'Management Trainee'. Appellant's performance was reviewed by the Selection Committee and after evaluating all the relevant factors, the Committee decided to offer him the post of 'Assistant (Grade-I)' in pay scale of Rs. 5500-175-9000/-. The appellant was not satisfied with the offer and did not accept the same and continued to work as a Management Trainee. Later on he filed the writ seeking directions for appointment as Executive Officer in terms of the offer of engagement. The said writ petition was disposed on ground that writ court rejected plea of appellant on ground that on completion of training the appellant was only entitled for consideration for post of Executive Officer. Respondent did not find him suitable for said post and subjective assessment was beyond the scope of judicial review.

Held

- On the question of suitability, the law is well settled. Whether a candidate is fit for a particular post or not, has to be decided by duly constituted Selection Committees that have the expertise on the subject. The decision of Selection Committees can be interfered only on limited grounds, either when there is illegality or patent material irregularity in the constitution of the committee or in the procedure vitiating the selection or where it can be proved that the decision of the Selection Committee was *mala fide*. The appellant has not raised any objection to the constitution of the committee. Although, he has made allegations of *mala fide*, however such allegations in our considered opinion remain merely as allegations, without any supporting material. On the plea of

mala fide, the law is equally well settled that the Courts do not uphold such a contention, merely on the basis of probability. The charge/allegation of *mala fide* has to be established by a positive evidence and cannot succeed on the mere *ipse dixit* or an inference. The Supreme Court in several judgments has held that the burden of proving *mala fide* is very heavy on the person who alleges the same and though allegations of *mala fides* are made easily, however the gravity of such allegation demands credible evidence. Mere suspicion cannot substitute evidence. In the present case, there is no material on record which can even remotely suggest that the decision of the Council of Members was *mala fide*.

- The contention of the appellant that the terms of engagement indicate deemed confirmation after the expiry of extended training period is also untenable. In the facts of the present case, the appellant cannot urge his plea of deemed confirmation, solely for the reason that after the expiry of extended training period, he was offered the post of Assistant (Grade-I). The appellant elected not to accept such an offer and, therefore, it is not a case that the respondents continued his training period or to say the probation period without confirming him. Having chosen not to accept the offer, the plea of deemed confirmation is not applicable. In the present case, there is no such stipulation. On the contrary, clause 9 of the letter of engagement clearly provides that consideration of the appellant will be subject to the condition that the appellant's performance and conduct is found satisfactory. The letter of engagement herein does not provide automatic confirmation on completion of the probation period. Merely because the appellant, has worked as Management Trainee and that too on account of his own volition, he cannot claim confirmation on the post of Executive Officer by implication.
- The law on the point of 'deemed confirmation' is no longer *res integra*. Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer. It is significant to note that after interviewing the appellant, he was offered to join as an Assistant (Grade-I) on completion of his probation period and his services were not terminated. In 2010 respondents declined to confirm the appellant on the post of an Executive Officer and yet the appellant chose to continue as a Management Trainee. In subsequent communications in 2011 as well as in 2013, respondents stand has been clear and unequivocal that they are not willing to offer the post of Executive Officer to the appellant. Therefore, mere continuance cannot be the ground of confirmation.
- There is no infirmity in the view taken by the Single Judge and thus, there is reason to interfere with the same.

- Accordingly, the appeal against impugned order Single Judge is dismissed.