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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 917/2001

This the 26th day of November, 2001.

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

Ved Singh S/O Bharat Singh,
R/O I-1329, Jahangirpuri,
Delhi. ... Applicant

(By Shri Shyam Babu, Advocate)

-versus-

1. Govt. of NCT of Delhi through its Secretary, 5, Sham Nath Marg, Delhi.
2. Commissioner of Police, Police Headquarter, I.P.Estate, New Delhi.
3. Addl. Commissioner of Police, Establishment, Police Headquarters, I.P.Estate, New Delhi. ... Respondents

(By Shri Ram Kawar, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, Member (A) :

The applicant has challenged order dated 26.2.2000 (Annexure-A) whereby his probation period as ASI (Exe.) is declared to have been completed w.e.f. 9.5.1990, i.e., after extending the same for one year from 9.5.1989 due to adverse remarks in his ACR for the period from 1.4.1988 to 6.2.1989. The applicant has also challenged the order dated 27.4.2000 (Annexure-B) whereby the decision contained in Annexure-A was communicated to him.

2. The facts of the case, briefly stated, are that the applicant was promoted as ASI (Exe.) in Delhi Police w.e.f. ^{16/} 7.1984 on temporary and ad hoc basis under rule 19(i) of the Delhi Police (Promotion & Confirmation)



Rules, 1980 (hereinafter referred to as the 1980 rules). His name was admitted to list D-I (Exe.) w.e.f. 16.1.1986 in terms of rule 15(i) of the rules ibid. He completed his training, namely, intermediate school course in May, 1986 whereupon his name was brought on list D-II (Exe.) w.e.f. 6.6.1986. He became due for termination of probation period w.e.f. 9.5.1989 but his case was kept pending as a departmental enquiry was pending against him. He was dismissed from service on conclusion of the departmental enquiry on 19.9.1990. The order of dismissal was upheld in appeal. The applicant filed O.A. No.2761/1991 before the Tribunal against the aforesaid punishment of dismissal. Vide order dated 17.2.1993, the punishment was set aside and the Tribunal ordered a de novo enquiry and reinstated the applicant in service w.e.f. 19.9.1990. A supplementary enquiry was ordered against the applicant which too culminated in his dismissal from service vide order dated 28.10.1995. Appeal filed against the order of dismissal was again rejected by the appellate authority. This punishment was also challenged by the applicant in OA No.2125/1996. The Tribunal allowed the OA and the impugned orders were quashed vide order dated 21.7.1999. The respondents were directed to pass speaking orders after holding a further enquiry by the same or by another enquiry officer from the stage from which the enquiry was held vitiated. The applicant was reinstated in service from the date of dismissal, i.e., 28.10.1995 vide order dated 15.10.1999 and a supplementary departmental enquiry was ordered against him. However, this time the applicant was exonerated from the charges levelled against him vide

order dated 21.12.1999 and the intervening period from 28.10.1995 to 21.12.1999 was directed to be treated as a period spent on duty for all intents and purposes. The respondents declared the applicant to have completed his probationary period w.e.f. 9.5.1990, after extending the same by one year from 9.5.1989 due to adverse remarks recorded in his ACR for the period 1.4.1988 to 6.2.1989 vide PHQ order dated 24.2.2000. The names of the immediate junior ASIs were considered and admitted to promotion list E-I (Exe.) w.e.f. 25.9.1992. Applicant's name was required to be considered for admission to promotion list E-I (Exe.) w.e.f. 25.9.1992 by a review DPC which was held on 17.5.2001. The review DPC evaluated the applicant's service record as well as his ACRs for the preceding five years and found him unfit for admission of his name to promotion list E-I (Exe.) w.e.f. 25.9.1992 due to adverse ACR for the period 1.4.1988 to 6.2.1989. According to the applicant, he had never been communicated adverse remarks for the period 1.4.1988 to 6.2.1989 and thus was not given any opportunity of representing against the same. According to the applicant, he should have been confirmed on completion of three years of probationary period, i.e., on 16.1.1989 and promoted w.e.f. 1992 as SI when his juniors/ batchmates were so promoted, particularly after his exoneration in the departmental enquiry.

3. The applicant has sought quashing and setting aside of impugned Annexures-A and B with a declaration that the applicant is deemed to have been confirmed as ASI (Exe.) w.e.f. 9.5.1989 when his batchmates were so

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confirmed, and a further declaration that the applicant is entitled to be promoted as SI (Exe.) w.e.f. 1992 when his batchmates/juniors were so promoted, with all consequential benefits.

4. Shri Shyam Babu, the learned counsel of the applicant, submitted that the applicant was admitted to list D-I (Exe.) w.e.f. 16.1.1986 and placed on probation in accordance with rule 5(ii) of the 1980 rules for a period of two years. He stated that under this rule, the applicant is deemed to have been confirmed after a maximum period of probation of three years, w.e.f. 16.1.1989, as the probation cannot be extended beyond three years under this rule. This rule was amended on 9.5.1989 and as per the amended rule, on completion of probation period of two years, the competent authority has to assess the work and conduct of the officer and in case he is found fit to hold the higher grade, an order declaring the person concerned as having successfully completed the period of probation has to be passed. In case the officer's work is not found to be satisfactory and requires to be watched for some more time, he has to be reverted to the post/grade from which he was promoted, or his probation has to be extended, as the case may be. The learned counsel contended that as the applicant had completed three years of probation before coming into effect of the amended rules, he is deemed to have completed his probation after a period of three years, i.e., on 16.1.1989 and as his juniors were confirmed on 9.5.1989, the applicant should also be confirmed w.e.f. 9.5.1989. The learned counsel relied upon the judgment

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in the case of Om Prakash Meena v. Union of India & Anr. in OA No.675/1994 wherein it was held that the applicant's period of probation could not have been extended beyond three years from the date he was appointed. It was held that within a period of two years the appointing authority could have either extended the period of probation by one year or reverted or confirmed the employee. The applicant therein also had completed his probation period before coming into effect of the amended rules. The applicant also relied on Wasim Beg v. State of Uttar Pradesh & Ors., JT 1998 (2) SC 354 wherein it was held as follows :

"15. Whether an employee at the end of the probationary period automatically gets confirmation in the post or whether an order of confirmation or any specific act on the part of the employer confirming the employee is necessary, will depend upon the provisions in the relevant Service Rules relating to probation and confirmation. There are broadly two sets of authorities of this Court dealing with this question. In those cases where the Rules provide for a maximum period of probation beyond which probation cannot be extended, this Court has held that at the end of the maximum probationary period there will be a deemed confirmation of the employee unless Rules provide to the contrary. This is the line of cases starting with State of Punjab v. Dharam Singh (1968 [3] SCR 1), M.K.Agarwal v. Gurgaon Gramin Bank & Ors. JT 1987 (4) SC 511 = (1987 Supp. SCC 643), Om Prakash Maurya v. U.P.Cooperative Sugar Factories Federation, Lucknow & Ors. (1986 Supp. SCC 95), State of Gujarat v. Akhilesh C. Bhargav & Ors. (1987 [4] SCC 482)."

5. The learned counsel of the respondents, on the other hand, contended that the amended rules are applicable in the applicant's case and his probationary period was not declared to have been successfully completed and, therefore, his probationary period cannot

be deemed to have been completed within three years from 16.1.1986 and he cannot be deemed to have been confirmed. In our view, rule 5(ii) of the 1980 rules is applicable in the applicant's case. In view of the judgments in the case of Om Prakash Meena (supra) and Wasim Beg (supra), the appointing authority could have extended the period of probation of the applicant for one year only beyond the period of probation of two years. Thus, the applicant's probation could not have been extended beyond a total period of three years and at the end of that period, there has to be a deemed confirmation of the applicant w.e.f. 16.1.1989, or, in any case, w.e.f. 9.5.1989 when the applicant's juniors were confirmed, after termination of their probation.

6. The learned counsel of the applicant stated in regard to the adverse remarks contained in the applicant's ACR for the period 1.4.1988 to 6.2.1989 that the applicant was never communicated the adverse remarks. In this behalf, the learned counsel of the respondents brought to our notice on the basis of the record that the adverse remarks for the aforesaid period were communicated to the applicant on 16.8.1989. Thus, the contention of the applicant that adverse remarks for the said period were not communicated, is unacceptable. However, for purposes of further promotion, ACRs for a further period of five years from 6.2.1989 to 6.2.1994 have to be taken into consideration and the adverse remarks prior to 6.2.1989 cannot come in the way of

consideration of the applicant's case for further promotion.

7. The learned counsel of the applicant contended that the seniority of the applicant should be restored as non-confirmation of the applicant in the post of ASI (Exe.) for a period of one year beyond the period of probation should not affect his seniority adversely. He relied on order dated 9.5.2001 in OA No.1159/1999, Mukesh Tyagi & Anr. v. Lt. Governor, Delhi & Ors. wherein rule 22 of the Delhi Police (Appointment & Recruitment) Rules, 1980 was quashed and set aside as contrary to law. Rule 22 read as follows :

"Seniority in the case of upper and lower subordinate shall be initially reckoned from the date of first appointment, and officer of subordinate rank promoted from a lower rank being considered senior, to persons appointed direct to the same rank on the same day, till seniority is finally settled by confirmation. The seniority of direct recruits in all ranks except Sub-Inspectors (Ex.) appointed as a result of some examination or selection shall be reckoned by the order of merit determined."

8. In the light of quashing of rule 22 above, the applicant cannot claim seniority against his juniors who were immediately confirmed after completion of probationary period of two years. In any case, the applicant has not challenged the seniority of his juniors who had overtaken him in the year 1988. Thus, the applicant shall be deemed to have been confirmed w.e.f. 9.5.1989, after he had completed three years'

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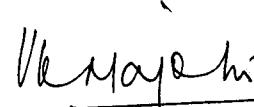
probationary period and after his juniors were confirmed on 9.5.1989.

9. Having regard to the reasons recorded and discussion made above, Annexure-A and Annexure-B orders are quashed and set aside and the applicant is deemed to have been confirmed as ASI (Exe.) w.e.f. 9.5.1989 when his batchmates were so confirmed. He shall also be entitled to all consequential benefits including pay and allowances, promotion etc.

10. The OA is allowed in the above terms. No costs.


(Kuldip Singh)

Member (J)


(V. K. Majotra)

Member (A)

/as/