

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL. PRINCIPAL BENCH

OA No.2120/1995

New Delhi, this 20th day of January, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Smt. Shanta Shastry, Member(A)

Harish Chandra Yati
C-13, PS Paharganj
New Delhi .. Applicant
(By Shri N. Safaya, Advocate)

versus

1. Commissioner of Police
PHQ, MSO Building, New Delhi
2. Addl. Commissioner of Police
(Admn.), PHQ, New Delhi .. Respondents
(By Shri Rajinder Pandita, Advocate)

ORDER(oral)

Hon'ble Smt. Shanta Shastry

The applicant in this case was appointed as Sub-Inspector (Executive) in the Delhi Police with effect from 7.7.80 after having been selected through the Staff Selection Commission. The inter-se seniority of SIs who were appointed during the year 1980 was fixed vide notification dated 2.4.83. In this, applicant was placed at SI.No.3. Thereafter, respondents issued integrated seniority list on 8.6.90. Applicant found that he has been placed in the new seniority list at SI.No.850 and his date of confirmation was shown as 19.12.83, while all his juniors were shown above him in the seniority list. Applicant represented against this and he was informed vide respondents' letter dated 27.10.94 that his representation had been considered and was rejected being time-barred. Aggrieved by this, applicant has approached this Tribunal with a prayer to quash the order dated 16.11.94 and to issue a direction to the respondents to place his name in the integrated seniority list in accordance with the seniority which was conferred on him vide order dated 2.4.83.

2. It is the case of the applicant that according to Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980, after successful completion of the period of probation the employee shall be confirmed by the competent authority subject to availability of permanent post. The probation period is of two years and can be extended at the most by one more year by the competent authority. In case of the applicant, his probation period was apparently extended by one more year. Applicant was confirmed with effect from 19.12.83 though according to him he should have been confirmed with effect from 6.7.83 i.e. after completion of 2 years of probation period plus one year of extended period of probation. It is because of this delayed confirmation, that the applicant claims that he has lost his seniority.

3. Learned counsel for the respondents submits that during the period of probation, there were two defaults of the applicant for which he was punished with censures. The two censures were awarded on 20.5.82 and 24.7.82 for the defaults on 18/19.12.81 and 26/27.11.81 respectively during the vital period. Vide Hqrs. letter dated 20.3.86 the vital period was counted from 19.6.81 to 18.6.83 i.e. two years preceding the date of availability of permanent post as per criteria laid down in the instructions issued by Hqrs. vide circular dated 19.4.80. The argument advanced by the learned counsel is that due to late confirmation the applicant has lost his original seniority as the seniority is finally settled from the date of confirmation as per Rule 8(c).

of Delhi Police (General Conditions of Service) Rules.

1980 and Rule 22 of Delhi Police (A&R) Rules. 1980 applicable at that time.

4. Shri Safaya, learned counsel for the applicant urges that since ^{Rule 6} 5(e) of the Delhi Police (A&R) Rules, 1980 reproduced below clearly stipulates a specific period beyond which probation cannot be extended the applicant was entitled for confirmation immediately on completion of the extended period of probation i.e. from 6.7.1983

"Rule 5(e)(i) - All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years. Provided that the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all.

(ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.

(iii) After successful completion of period of probation, the employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post".

5. In this matter the learned counsel is drawing support from the judgement dated 22.3.79 of the Hon'ble Supreme Court in Civil Appeals Nos.2902 and 2903 of 1977 in the case of Paramjit Singh Sandhu and Ors. Vs. Ram Rakha and Ors. (1979(2) Vol.21 SCSLR 88). The relevant para 9 of the judgement reads as follows:

"It was contended on behalf of the direct recruits that once a specific period of probation is fixed and a fetter is put on the power of the Government to extend probation only by a specific period, at the end of such extended period either the service of the direct recruit is to be dispensed with on the ground that he was unfit for appointment or if he is continued thereafter he must be deemed to have been confirmed and the date next after

the day of expiry of his ordinary or extended period of probation would be the date of his confirmation. This Court has consistently held that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in his post as a probationer only in the absence of any communication to the contrary in the original order of appointment or promotion or the Service Rules. In such a case an express order of confirmation is necessary to give the employee a substantive right to the post and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation it is not possible to hold that he should be deemed to have been confirmed. This view was taken in Sukhbans Singh V. State of Punjab, G.S.Ramaswamy V. IG of Police, Mysore State and State of UP V. Akbar Ali. This view was founded upon the relevant rules which permitted extension of the probationary period for an indefinite time. In fact there was no negative rule in these cases prohibiting the Government from extending the probationary period beyond a certain maximum period. However, where the rules provided for a fixed period of probation with a power in the Government to extend it up to a specific period and not any unlimited period, either by express provision or by necessary implication, at the end of such specified period beyond which the Government had no power to extend the probation, the probationer if he continues beyond that period, should be deemed to have been confirmed in the post. This Court in State of Punjab V. Dharam Singh after taking into consideration rule 6(3) of the Punjab Educational Service (Provincialised Cadre) Class III Rules, 1961, which provide for either dispensing with the service of the person appointed to the post or probation if his work was found to be unsatisfactory or to extend the period of probation for such period as may be deemed fit or revert him to his former post if he was promoted from some lower post, provided that the total period of probation including the extension if any, shall not exceed three years, held that the Service Rules fixed a certain period of time beyond which the probationary period cannot be extended and if an employee appointed or promoted to a post is allowed to continue in that post after completion of the maximum period of probation without an express order of confirmation he cannot be deemed to continue in that post as a probationer by implication. In such a case the court held it is permissible to draw an inference that the employee allowed to continue in the post of completion of the maximum period of probation has been confirmed in the post by implication. Rule 8 of the Service Rules prescribes the period of probation of two years beyond one

(20)

year meaning thereby that in any case the Government would not have the power to extend the period of probation beyond a period of three years. In this situation the ratio in Dharam Singh's case after the expiry of the period without any specific order of confirmation he should be deemed to continue in his post would mutatis and mutandis apply and it will have to be held that the direct recruit who completed the period of probation of two years in the absence of extension of probationary period, would be deemed to be confirmed by necessary implication."

6. He cites another judgement of this Tribunal decided on 12.4.91 in OA No:1988 of 1990 in the case of Surender Singh Gandhi Vs. Delhi Admn. reported in [(1992)] 21 ATC 753 which also held that "the normal period of probation of an employee appointed to Delhi Police is two years. However, the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all. It was made clear that after the expiry of maximum period of probation stipulated in the Rules of Delhi Police there is an inference of automatic confirmation, with a quotation from the judgement in the case of State of Punjab Vs. Dharam Singh (supra).

7. The learned counsel further contends that the minor penalty of censure can be no bar for promotion and cannot be a ground for overlooking seniority in the matter of promotion as held in the judgement of the Guwahati Bench of this Tribunal decided on 22.7.92 in OA 941/1991 in the case of A.K. Sahu Vs. UOI AIR 1992(2) CAT 48. In this judgement reliance was placed on the judgement of High Court in case of S.M. Menon Vs. State of Kerala and Ors. [1970 LAB&IC 897] wherein the same view was expressed.

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8. Shri Safaya points out that though the applicant was awarded two censures their effect was over after six months as per the extant instructions of the Delhi Police issued by the Commissioner of Police vide circular dated 22.9.92 clause (v). They ~~are~~ ^{same} extracted below:

"Officers who have been awarded censures during the last six months with no other punishment may also be allowed to be brought on promotion list provided they do not have any other major punishment. However, the effect of censures by debarring the official for promotion by six months shall continue."

9. In the light of these instructions also the applicant should have been confirmed on completing the extended probation period on 6.7.83.

10. Learned counsel for the respondents however submits that when the applicant was appointed, the Rules of Punjab Police were applicable and according to these rules, there was no outer limit prescribed on the probation period. He further points out that the applicant has not raised the point regarding confirmation in his representation. The only prayer pertains to seniority and the respondents have rightly fixed his seniority as he could be confirmed only on 19.12.83. His confirmation was deferred for 6 months because the date of default of the censures awarded to him comes in the vital period. This vital period was counted from 19.6.81 to 18.6.83, i.e. 2 years preceding the date of availability of permanent post.

11. He also submits that the applicant had earlier filed OA No.1915/95 challenging his non-promotion which was dismissed by an order dated 18.7.96. In this judgement it was held that though the punishment of

292

censure could not have been taken into consideration after a period of six months. still it would not wash merely by lapse of time and unless the same is set aside or expunged by the appropriate authority. it remains on the service records for all relevant purpose. Learned counsel therefore avers that the action of the respondents in confirming the applicant from 19.12.83 is in order and the seniority fixed thereby is also correctly fixed.

12. We have heard the learned counsel for both ^{the} parties. The applicant's case is clearly covered by the ratio of the judgement in Dharam Singh's case (supra). We have also come across the judgement of the Madras Bench of the Tribunal in the case of S.Gabriel Pandian Vs. UOI (1993) 23 ATC 528. It was held therein that confirmation of an officer undergoing punishment could not be postponed merely for that reason. By postponing confirmation of the applicant on the ground of reduction in pay to the minimum of the scale of Inspectors having been imposed, the respondents had in effect decided to postpone his right to hold the post as well. The officer was continued in the post of Inspector although drawing a lower scale as a result of punishment. The Court held that confirmation of the officer should not have been postponed by taking into account punishment that has been imposed.

13. In view of the above discussions we hold that the applicant should have been confirmed from the date his extended period of probation got over. We, therefore, set aside the impugned order dated 16.11.94 and direct

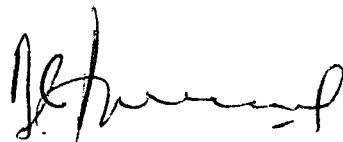
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292

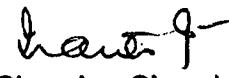
293

the respondents to hold a review DPC to consider confirmation of the applicant w.e.f. 6.7.83 when the three years of his probation were completed and also to fix his seniority duly on the basis of the changed date of confirmation. Our orders shall be complied with within a period of 3 months from the date of receipt of a copy of the order.

14. The OA is thus allowed. There shall be no order as to costs.



(Ashok Agarwal)
Chairman



(Smt. Shanta Shastry)
Member(A)

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