

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 675/94

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T.A. No.

DATE OF DECISION 16-7-99

Sh. Om Prakash Meena

....Petitioner

Sh. Shyam Babu

....Advocate for the
Petitioner(s)

VERSUS

UOI through Commissioner of Police and ors.Respondent

Sh. Jog Singh, learned counsel through proxy counsel Sh. S.K. GuptaAdvocate for the Respondents.

CORAM

The Hon'ble Sri V. Ramakrishnan, Vice Chairman (A)

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not YES
2. Whether it needs to be circulated to other Benches of the Tribunal? NO.

Bench

(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

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O.A. 675/94

New Delhi this the 16th day of July, 1999

Hon'ble Shri V. Ramakrishnan, Vice Chairman(A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Om Prakash Meena,
S/o Shri Sugan Chand,
now Sub-Inspector Delhi Police
No. D/1261 at Special Branch,
Police Headquarters,
New Delhi.
R/o F-3, Police Colony,
Mehram Nagar, Palam Airport,
New Delhi. ... Applicant.

By Advocate Shri Shyam Babu.

Versus

1. Union of India through
Commissioner of Police,
Police Headquarters, I.P. Estate,
Delhi.
2. Addl. Commissioner of Police (Admn.),
Police Headquarters, I.P. Estate,
Delhi. ... Respondents.

By Advocate Shri S.K. Gupta, learned proxy counsel for
Shri Jog Singh.

O R D E R (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 22.2.1994 (Annexure 'A'), in which it has been stated that since the officer has already been reduced to the rank of Sub-Inspector (SI) as a measure of penalty on 11.12.1989, it was ordered that the applicant will be deemed to be reverted to the rank of SI with effect from the same date i.e. 11.12.1989 for his failure to successfully complete his probation period. He has prayed that this order should be quashed and set aside and the respondents should be directed to allow the applicant to restore him to the promoted post of Inspector from 11.12.1992 i.e. three years after the penalty order of 11.12.1989 has been passed.

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2. The brief facts of the case are that the applicant was promoted to the rank of Inspector on 13.6.1985. He was proceeded departmentally and a penalty order was imposed on him on 11.12.1989. By this order, the disciplinary authority held the charge levelled against the applicant as proved and, therefore, confirmed the proposed punishment of reducing the applicant from the rank of Inspector to the rank of SI for a period of three years with consequential reduction in his pay. We are informed that this order has become final. Shri Shyam Babu, learned counsel for the applicant, has submitted that after the period of three years from the date of the penalty order, that is 11.12.1992, the applicant was entitled for being restored to the position of Inspector as the period of the penalty has run its course. However, by the impugned order dated 22.2.1994 the respondents have reverted the applicant to the rank of SI with effect from the same date i.e. 11.12.1989 on the ground that he has failed to successfully complete his probation period.

3. Shri Shyam Babu, learned counsel, has submitted that since the applicant had been promoted as Inspector with effect from 13.6.1985 and having regard to the provisions of Rule 5 (ii) of the Delhi Police (Promotion and Confirmation) Rules, 1980 (hereinafter referred to as 'the 1980 Rules'), he is deemed to be confirmed as Inspector after the maximum period of probation of three years, that is, with effect from 12.6.1988. He has relied on a number of judgements of this Tribunal which have

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been referred to and followed in the latest judgement in **Gurjit Singh Vs. Lt. Governor of Delhi & Ors.** (O.A.3028/91) decided on 7.8.1996 (copy placed on record).

In this order, it has been held that after the maximum period of probation of three years has been completed, the applicant shall be deemed to have been confirmed with all consequential benefits. Learned counsel submits that this judgement has become final and binding and has also been implemented by the respondents. He, therefore, submits that in the present case since the applicant had been promoted as Inspector w.e.f. 13.6.1985 and had completed his maximum period of probation of three years on 12.6.1988, he too should be deemed to have been confirmed in that post. After such confirmation, the reason given in the impugned order dated 22.2.1994 that he has failed to successfully complete his probation on the basis of which the applicant stood reverted to the lower post is clearly against Rule 5(ii) of the 1980 Rules as it existed at the relevant period. He has, therefore, submitted that the impugned order should be quashed and set aside with regard to the applicant's reversion to the lower post of SI and the applicant should be allowed to continue the promoted post of Inspector with consequential benefits.

4. The respondents in their reply have controverted the above submissions and we have also heard Shri S.K. Gupta, learned proxy counsel. ~~The respondents~~ ^{they} In their reply have submitted that since the applicant is a

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defaulter Police Officer and there are so many obstacles in the shape of punishments in his service career, on finalisation of the departmental inquiry, his case was considered for confirmation but in view of his chequered history of service, he was found totally unfit for confirmation in the rank of Inspector and he was, therefore, reverted to his substantive rank w.e.f. 11.12.1989 by order dated 22.2.1994. Shri Gupta, learned proxy counsel, has submitted that Rule 5(ii) of the 1980 Rules has been amended by Notification dated 9.5.1989. He has submitted that the decision to initiate disciplinary proceedings on which the aforesaid penalty order of 11.12.1989 was imposed was taken on 2.5.1989. The respondents have, however, contended in their reply that they have followed the rules and the O.A. should, therefore, be dismissed.

5. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. Rule 5(ii) of the 1980 Rules, prior to its amendment, provides as follows:

"All promotions from one rank to another against temporary or permanent vacancies, except in the case of ad hoc arrangements shall be on officiating basis and the employees shall be considered for confirmation only on availability of permanent posts and on successful completion of probation period of minimum 2 years provided that the appointing authority may, by a special order in each case permit periods of officiating service to count towards the period of probation. On

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the conclusion of the probationary period, the competent authority may either confirm the promotee or revert or, if it so thinks fit, extend the period of probation by the year and on the cancellation of the extended period of probation pass such orders as it may deem fit provided that the period of probation shall not be further extended in any case while on probation, an officer may be reverted without departmental proceedings. Such reversion shall not be considered reduction in rank for the purpose of Rule 8(b) of Delhi Police (Punishment and Appeal) Rules, 1980".

7. In the judgement of the Tribunal in **Gurjit Singh's case (supra)** in which one of us (Smt. Lakshmi Swaminathan, Member(J)) was a Member, the Tribunal had examined Rule 5(ii) of the 1980 Rules. In this case, having regard to the provisions of this Rule, the applicant's probation period could not have been extended beyond three years from the date he was appointed. Within a period of two years, the appointing authority could have either extended the period of probation by one year or reverted the employee or confirmed the employee. Following the earlier judgements of the Tribunal (See **Narain Singh Vs. Union of India & Ors.** (O.A.899/92, decided on 2.4.1993); **Azad Singh Vs. Lt. Governor, Delhi & Ors.** (Q.A.534/92, decided on 25.3.1994) and **Rishi Dev Sharma Vs. Lt. Governor of Delhi & Ors.** (O.A. 1346/91, decided on 14.7.1885), the respondents could not extend the period of probation beyond the period of three years and the applicant will, therefore, have to be deemed to have been confirmed on completion of three years from the date of his appointment/promotion which in this case

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will be 12.6.1988. In the present case, it is seen that the decision to proceed against him departmentally on which the penalty order was passed on 11.12.1989, had been taken on 2.5.1989. By this time, following the orders of the Tribunal mentioned above, and having regard to the provisions of Rule 5(ii) of the 1980 Rules, he is deemed to have been confirmed as Inspector w.e.f. ^{informed by Respondents' counsel} 12.6.1988. We were also / that the Notification dated 9.5.1989 amending Rule 5(ii) of the 1980 Rules has come into effect from the date of its publication i.e. 9.5.1989 which again is after the maximum period of probation as provided in the unamended 1980 Rules which will be applicable to the present case.

7. In the light of the above discussion, we find that the impugned order dated 22.2.1994 which proceeds on the assumption that the applicant has failed to successfully complete his probation period cannot be sustained, as on that date he is already deemed to have completed his probation period having completed three years as per the then existing Rules w.e.f. 12.6.1988. Therefore, in the facts and circumstances of the case, this application succeeds and is allowed. The impugned order dated 22.2.1994 is quashed and set aside. The respondents shall take necessary action to restore the applicant to the rank of Inspector permanently i.e. from the date on which he was reverted to the post of SI with all consequential benefits in accordance with the rules and regulations. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

V. Ramakrishnan

(V. Ramakrishnan)
Vice Chairman(A)