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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2203/2000

Tuesday, this the 18th day of September, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)  
Hon'ble Shri S.A.T. Rizvi, Member (Admn)

Shri Mohinder Kumar V.M.(H.S.GDE-I),  
Stn.Wksp, EME, Delhi Cantt.-16,  
R/O 1/206/18, Sanatan Dharam Mandir,  
Sadar Bazar,  
Delhi Cantt.

...Applicant

(By Advocate: Shri A.K. Bhardwaj)

Versus

1. Union of India through  
Defence Secretary, Ministry of Defence  
South Block, Gate No.2,  
New Delhi.
  2. Director General of EME, Army Headquarters  
DHQ, PO, New Delhi
  3. The Officer-in-Command  
EME Records, Secunderabad,  
Civ CA-3, Capt. V.S.Battu,  
Secunderabad-50021.
  4. The Commanding Officer  
Stn.Wksp, EME, Col.G.A.Nair,  
Delhi Cantt.-10.
  5. The Commandant,  
Central Venicle, Depot Workshop,  
EME, Delhi Cant.-10 (Col.Rajender Kumar)
- ...Respondents
- (By Advocate: Shri S.M. Arif)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, M (A):-

The applicant, Mohinder Kumar, who happens to be a SC community official was promoted from the post of Vehicle Mechanic to the post of Chargeman Grade II by the respondents' order dated 2.5.1991 (Annexure A-2). He was placed on probation for a period of two years by the respondents' letter dated 28.4.1991 (Appendix-C). After remaining on probation, for one reason or the other, for a long period of about nine years, the respondents have

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proceeded to revert the applicant to the post of Vehicle Mechanic vide their order dated 1.8.2000 (Annexure A-1). Aggrieved by the same, the applicant has filed the present OA.

2. We have heard the learned counsel on either side at length and have also perused the material placed on record.

3. The applicant, we find, had approached this Tribunal earlier in 1997 through OA-852/1997 which was disposed of on 27.3.2000 without providing any relief as the same had been filed pre-maturely. It appears that at the time the aforesaid OA was filed, the respondents had already taken a decision to revert the applicant to the post of Vehicle Mechanic but no order of reversion had actually been passed. The Tribunal accordingly found the aforesaid OA as pre-mature and dismissed the same. We are told that the applicant had <sup>& however</sup> succeeded, while pursuing the aforesaid OA, in obtaining an ad-interim ex-parte order of stay against reversion. RA filed thereafter too was dismissed. Thus, he continued in post of Chargeman Grade II for some time. We have noted that as soon as the present OA was filed, the applicant succeeded once again in obtaining an ad-interim order of stay on 23.10.2000. By the aforesaid order of the Tribunal, the respondents' order dated 1.8.2000 actually reverting the applicant to the post of Vehicle Mechanic has been stayed. The aforesaid stay order continues to date.

4. The main controversy in the present OA centres around the question whether rules exist providing for any

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maximum period of probation in the present case or, generally speaking, in all cases where no specific rules have been framed in that regard. The learned counsel appearing on behalf of the applicant has vehemently argued that even if the rules do not, in terms, provide for a maximum period of probation, the existence of such a (maximum) period has to be inferred from the executive/administrative instructions, if any, issued by the Govt. on the subject of probation. He has accordingly relied on the instructions dated 15.4.1959 issued by the MHA which, inter alia, provide as under:-

"(viii) While the normal probation may certainly be extended in suitable cases, it is not desirable that an employee should be kept on probation for years as happened occasionally at present. It is, therefore, suggested that, save for exceptional reasons, probation should not be extended for more than a year and no employee should be kept on probation for more than double the normal period."

5. In the present case, a definite and specific service rule dealing with the period of probation in all its aspects does not seem to have been framed. In the event, the period of 2 years stipulated in Appendix 'C' will have to be taken as the normal period of probation. No rule exists providing for the maximum period of probation either. In the circumstances, the learned counsel has, by relying on the provision reproduced above, argued that in the present case, the period of probation could not be extended beyond a maximum of four years, being double the normal period of probation of two years. The applicant, having neither been confirmed nor his service terminated within a reasonable time after the expiry of the

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maximum period of 4 years, the applicant should, according to him, be deemed to have been confirmed and, that being the case, the service of the applicant could not have been terminated so very belated on 1.8.2000 without putting him to notice and without following the procedure consistent with the principles of natural justice. In support of his submission favouring inferred/deemed confirmation in the circumstances of this case, the learned counsel has proceeded to rely on Apex Court in Om Prakash Maurya Versus U.P. Co-operative Sugar Factories Federation, Lucknow & Ors., reported as ATJ 1986 142. On the same point of inferred/deemed confirmation, he has also relied on two judgements rendered by this Tribunal in Subhas Chandra Biswas Vs. Union of India & Ors., reported as 1991 (1) ATJ 617 and R. K. Bharati Vs. Union of India & Anr., reported as 1989 (2) ATJ 52. He has thus submitted that the present case is one in which confirmation will have to be inferred in the light of the provisions made in the MHA's OM dated 15.4.1959 and as provided by the Apex Court and by this Tribunal in the aforesaid cases.

6. The other leg (in fact, the first) of the learned counsel for the applicant's argument is that where a promotion takes place within the same group (group 'C' in the present case), the persons promoted are not to be kept on probation at all. However, in view of the aforesaid specific provisions made in the respondents' letter dated 28.4.1991 (Appendix-C) and in respondents' Daily Order dated 23.5.1991 (Appendix-P), laying down 2 years' period of probation in the knowledge of the applicant, the learned counsel has not pressed the aforesaid contention.

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7. The learned counsel for the applicant next proceeded to advance the plea that even though the applicant remained on probation, to being with, for a period of two years, the respondents did not care to assess his work and conduct during the said period and also failed to convey the assessment, if any, made to the applicant before the expiry of the initial period of probation. According to him, the applicant became aware of the existence of adverse circumstances against him for the first time only in September, 1993. Thus, according to him, the applicant should have been confirmed straightaway after the expiry of the aforesaid period of two years. The respondents have, however, continued his probation much beyond the initial period of two years and have also been communicating the adverse circumstances found against him, to the applicant from time to time. His contention is that, by doing so, the period of probation cannot be stretched without limit. The limit as already stated, is four years whereafter the period of probation cannot be extended under any circumstance. In this view of the matter, according to the learned counsel, the applicant should have been confirmed or should be deemed to have been confirmed after the expiry of the maximum period of four years, if not soon after the expiry of ~~the~~ 2 years. This will have to be so, according to him, despite the notices received by the applicant from time to time pointing out the deficiencies in his work, even after 4 years.

8. The learned counsel appearing on behalf of the respondents has, for the purpose of determining the period of probation in the present case, relied on respondents'

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circular letter dated 23.6.1989 (Appendix-A) and also on the provisions made in the MHA's OM dated 15.4.1959. The former provides that personnel promoted from the industrial tradesmen to Supervisors, namely, Chargemen/Senior Chargemen will continue to be kept on probation for a period of two years. Further, in terms of para 5 of Govt. of India, Ministry of Home Affairs, Deptt. of Personnel and AR OM No. 21011/2/80 Estt.(P) dated 19th May 1983 in the absence of specific orders regarding satisfactory completion of probation or otherwise, duly communicated to him, the probationer shall be deemed to have continued on probation. The aforesaid provision, we find, lays down a period of two years as the initial/normal period of probation but does not lay down the maximum period upto which probation can be extended. In a nutshell, therefore, <sup>the</sup> aforesaid circular <sup>of 19-5-1983</sup> provides that in a situation, like the present, unless specific orders regarding satisfactory completion of probation or otherwise are communicated to the probationer, he shall be deemed to continue in probation, the length of the period notwithstanding. According to him, in the absence of a specific rule framed by the respondents on the question of period of probation, the aforesaid provision should be allowed to prevail, i.e., the respondents will have to be allowed the liberty ~~have the liberty~~ to keep a person on probation for quite as long as is found necessary so to do by the respondents.

9. He has also drawn our attention to the provision made in the MHA's OM of 15.4.1959, reproduced by us in paragraph 4 above. The same, according to the learned counsel for the respondents, clearly provides for <sup>the</sup>

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extension of the period of probation even beyond four years for exceptional reasons. The relevant provision carved out from the aforesaid extract is, for the sake of convenience, reproduced as under:-

"(viii) .... It is, therefore, suggested that, save for exceptional reasons, probation should not be extended for more than a year and no employee should be kept on probation for more than double the normal period."

The learned counsel's contention is that the respondents have, for exceptional reasons, decided to extend the period of applicant's probation beyond the period of four years and this action, on their part, is fully covered by the aforesaid circular of 15.4.1959.

10. According to the learned counsel, the respondents exhibited a good deal of consideration in dealing with the applicant in this OA. They have extended the period of his probation in the higher post time and again and that too after duly notifying the deficiencies noticed in his work and conduct. No individual person has taken decisions in the matter. All decisions extending the period of applicant's probation have been taken by the DPCs and, to this extent, according to him, it is not possible successfully to allege malafide individually against any of the respondents. The respondents had tried to assist the applicant by posting him in a different environment after he had failed to improve in the environment in which he was posted immediately on promotion. Even this gesture failed to produce any positive result, and the applicant's performance did not show any sign of improvement. In

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November 1996, after trying out the applicant for well over five years, the DPC took the unavoidable decision to revert the applicant to the lower post of Vehicle Mechanic. That decision could not be implemented as the applicant, without losing time approached this Tribunal and, as stated, also succeeded in obtaining an ad-interim order of stay against reversion. The applicant has continued in the higher post of Chargeman Grade II all along since on the strength of stay orders and is still working in the higher post.

11. We have carefully considered the rival contentions of the parties and find that the respondents have meted out a fair and just treatment to the applicant by retaining him in service in the higher post despite lapses and deficiencies on his part for well over five years. They have unfailingly communicated the deficiencies noticed in the work and conduct of the applicant to him starting 4.2.1993 and 8.4.1993, which are both within the initial period of probation of 2 years, so as to enable the applicant to improve upon his work and to measure up to the expectations of the employers. Repeated notices issued to him giving him opportunities to improve have proved to be of no avail. Change in environment also did not work.

12. By arguing that by necessary implication at any rate a maximum period of 4 years of probation could be said to have been laid down in the instant case, the learned counsel for the applicant has very ably tried to convince us that it would be justifiable to draw the inference of deemed confirmation in favour of the applicant thus leading to the conclusion that the order of

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termination is bad in law and deserves to be set aside. He has, in support of his claim, relied on the ratio of the judgements of the apex court and <sup>of</sup> this Tribunal referred to in para .5.. On proper consideration of the facts and circumstances of this case in their entirety, we find ourselves unable to accept the above position. On the other hand, having regard to the various pleas advanced by the learned counsel for the respondents, we are convinced that, a maximum period of probation beyond which no extension could be granted having not been laid down specifically in the relevant service rules, nor otherwise, the theory of deemed confirmation will not find application in the present situation, and thus the respondents were well within their rights to terminate the service of the applicant by their order dated 1.8.2000, after 9 years, out of which nearly three and a half years have been spent under this Tribunal's stay orders.

13. Before we part with this order, it will be useful to recall that one of the key contentions raised on behalf of the applicant was that no adverse communication was issued to him within the initial period of probation and this had resulted in grave injustice to him. We are greatly constrained to note, on the other hand, that the applicant has ~~deliberately~~ deliberately failed to place correct facts on record and has thus not come before the Tribunal with clean hands. He has suppressed material information. From the departmental records produced before us by the learned counsel for the respondents, we find that opportunities were given to him to show improvement in his work even before the initial period of probation of two

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years had expired. As a matter of fact, two notices were issued to him during the aforesaid period, firstly on 4.2.1993 and thereafter on 8.4.1993. Both these notices have been duly received by the applicant. A third notice of July 1993 has been ignored by him in his pleadings wherein it is stated that notice was first received by him only in September 1993. Such a conduct would, in normal course, have compelled us to impose a heavy cost on the applicant. In the peculiar circumstances of this case and taking special note of the fact that the applicant belongs to the SC community, we direct imposition of a nominal costs of Rs.100/- (Rupees One Hundred) only, to be paid in a month's time.

14. For all the reasons mentioned in the preceding paragraphs, the OA is found to be devoid of merit and the same is dismissed. Stay order, in force, stands vacated.

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(S.A.T. Rizvi)  
Member (A)

(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)

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