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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench, New Delhi.

O.A.No.1430/89

New Delhi, This the 04th April of 1994

Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri S.R. Adige, Member(A)

Shri Gian Chand Verma
S/o Shri J.L. Verma
R/o 303, Katra Sujan Rai, Delhi Gate
New Delhi-2
By Advocate Shri B S Charya

...Applicant

Versus

1. The Commissioner of Police
Delhi Police
Police Headquarters
N.S.O. Building,
New Delhi - 2
2. Union of India,
Ministry of Home Affairs
Government of India
North Block, New Delhi
(Through its Secretary)

By Advocate Mrs. Avnish Ahlawat

O R D E R(Oral)

Hon'ble Shri J.P. Sharma, Member(J)

1. The applicant was appointed as a Head Constable(Ministerial) in April 1970 and was confirmed as Head Constable in the year 1973. In the year 1982 there was no recruitment rules envisaging promotion from the rank of Head Constable (Ministerial) to the rank of Asstt. Sub-Inspector (Ministerial) and the applicant was therefore given an adhoc promotion as ASI Ministerial in the absence of the rules on the subject. The applicant was however given adhoc appointment from 24.3.82 under rule 19(1) of Delhi Police(Promotion & Confirmation) Rules 1980. The applicant however continued on the post on adhoc basis. But he was reverted in the forenoon of 11 Nov 85 to the substantive post of Head Constable. A regularly constituted DPC considered

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the promotion of the applicant on regular basis and having found him suitable recommended the promotion. The applicant was therefore appointed on regular basis on probation with effect from 11 Nov 85 as ASI Ministerial and the probation period was for two years.

2. The grievance of the applicant in this application is that he should have been confirmed in his appointment as Head Constable Ministerial at least with effect from 11-11-87 when he has completed two years period from the regular appointment. The respondents however, confirmed the applicant with effect from 11-5-88 and as such he made a representation and thereafter in June 1989 the applicant had filed this O.A. for the grant of relief that confirmation of the applicant as ASI Ministerial be anti-dated to 11 Nov 1987 from 11-5-1988. He has further prayed that the circular order issued by the respondents on 19-4-80 when the Punjab Police Rules has become redundant in view of the judgement in TA 473/85 decided on 30-5-88. It has also been prayed that in fact the initial promotion of the applicant as ASI Ministerial with effect from Feb 82 be taken as a regular promotion for all purposes and in any event the period he has covered from Feb 82 to till Nov 85 be the period of trial and can be taken to be probationary period and so the reversion by the order of Nov 85 and re-appointment on regular basis on the same date by order of even dated does not give any disadvantage on the point of confirmation.

3. The respondents in their reply have contended the grounds of relief and taken their stand that there were no recruitment rules for promotion to the post of ASI Ministerial from the rank of Head Constable. The applicant was given ad hoc appointment and in the letter of appointment it was specifically mentioned that this shall not be considered as a regular appointment and will not count for any purposes either for regular or for seniority. They however stated

that during the vital probationary period the applicant was imposed minor punishment of censure and due to this the period of trial was extended by six months and only thereafter when he was found fit he was confirmed with effect from 11 May 88. The applicant according to respondents is not entitled to any relief.

4. We have heard the learned counsel for the applicant at a considerable length and perused the records. The relief with regard to treating initially the appointment as a regular appointment with effect from Feb 82 is barred by limitation and jurisdiction of this Tribunal and also suffers from the fact that the applicant has not challenged the reversion order of 11 Nov 85. The arguments of the learned counsel for the applicant that the emoluments of the applicant as well as the increment was not affected would not undo the order unless it is declared as such. Subsequently, his acceptance of fresh appointment on regular basis by an order of even dated also estop the applicant to take a contradictory stand in the matter. Thus this relief is barred by limitation and the Tribunal cannot go into the cause of action which has arisen three years earlier to the enforcement of AT Act 1985 i.e. before Nov 82.

5. Even considering this aspect of merit there was no recruitment rules for promotion to the post of ASI Ministerial and instead of the applicant being allowed to stagnate at the post of Head Constable he was given a promotion only as a stop-gap arrangement on adhoc basis in anticipation of the rule coming into force in the near future. The applicant can not get any benefit as the appointment was not according to the rules but only on compassion.

6. The learned counsel for the applicant has argued at length that the instructions ^{of April 1982} ~~of appeal~~ issued in the circular order ^{ed} by the respondents were under repeal PPR of Rules 1934. These rules have been since repealed by Delhi Police Act 1978 ^{new} and the rules framed there under. However, these instructions

only laid down certain guidelines in the matter of making confirmation. Analogous provision exist under rule 5(e) in Delhi Police appointment and recruitment rules 1980. These rules also laid down that the probation period ^{can be} ~~get~~ extended upto a maximum period of three years while minimum period is 2 years. These rules also take probation as a period of trial of persons appointed on temporarily or officiating capacity against temporary or permanent posts. The first contention of the learned counsel is that the applicant was a promotee and he could not be said to be on probation is a misconception, which is not legally sustainable. Any appointment to the service either directly or by promotion is subject to rules. The rule prescribes that all appointment shall be initially temporary and the appointee was to be on probation for a period of two years. Thus the applicant on his appointment was placed on probation according to the extant rules. The next contention of the learned counsel is that the earlier period from Feb 82 to Nov 85 which subsequently culminated in regular appointment beyond Nov 85 should be counted as a period of probation. A period of probation starts only when his appointment is made according to rules and adhoc appointee is never placed on probation and that is the material difference between the adhoc appointment and the regular appointment. Adhoc appointment has neither a right nor a lien on the post. The probationer on completion of probation has a lien on the post. It was only after Nov 85 the applicant was placed on probation. The vital period for him was Nov 85 to Nov 87. Thus the applicant was on trial during this period and the respondents were to judge his act and omission in order to find his suitability for confirming in his appointment.

7. It is not denied in the rejoinder or in the pleadings by the applicant that he was not given any punishment of censure of minor penalty. The applicant however had stressed that when he was given this minor punishment he was never informed. But the communication addressed to him in 14.6.88 goes to show

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that this censure was in the vital period and that vital period is period of trial commencing 11 Nov 85 to Nov 87. A copy of the order has also been filed as Annexure P-3 by the applicant himself. The contention of the learned counsel for the applicant that the respondents had no material to judge suitability of the applicant cannot be taken for granted. There was a minor penalty proceedings and the applicant was imposed penalty of censure. Thus this Tribunal does not wish to judge the wisdom of the administration in extending the period of probation for further six months which has been done as per rules. We do not find therefore, any illegality or impropriety in the aforesaid order of extending the probation period.

8. The contention of the learned counsel for the applicant is also that the applicant was never informed regarding any of his misconduct of which he was punished for a minor penalty of censure. In fact, annexure of document P3 by itself is sufficient communication to show that the applicant was not pursuing ^{the job} well and therefore he was not confirmed in his appointment.

9. The learned counsel for the applicant referred to the judgement of CAT in TA 473/85 decided on 30-5-88 (Banwari Lal Vs. UOI & Ors.) wherein it was directed to prepare fresh lists of Head Constable Ministerial and list of officers suitable for promotion in the higher grade by complying the provision of PP Rules 12.30 and 13.7 and consider the suitability of petitioner of that case for appointment to such grade. That question therefore, relates to promotion. Here the question is of confirmation. That authority therefore, is not relevant to this case. As regards the standing order of April 1980, it has already been discussed above. The application is therefore devoid of merit and is dismissed. There is no order as to costs.

S.R. Adige
(S.R. ADIGE)
Member (A)

J.P. Sharma
(J.P. SHARMA)
Member (J)