

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(1) O.A. No. 1143/1986
(2) ~~T.A.~~ No. 1249/1987

198 May 4, 1989.

DATE OF DECISION May 4, 1989.

(1) Ganga Ram
(2) Udai Singh Rath Petitioner

(1) Shri Shyam Babu
(2) Shri Mukul Talwar Advocate for the Petitioner(s)

Versus.

(1) Delhi Administration
(2) Delhi Administration & Another Respondent

Shri M.M. Sudan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Kaushal Kumar, Member (A).

The Hon'ble Mr. T.S. Oberoi, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

MGIPRRND-12 CAT/86-3-12-86-15,000

(T.S. OBEROI)
MEMBER (J)

(KAUSHAL KUMAR)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

DATE OF DECISION: May 4, 1989.

(1) Regn. No. O.A. 1143/1986.

Ganga Ram Applicant.

V/s.

Delhi Administration .. Respondents.

Applicant through Shri Shyam Babu, Counsel.

(2) Regn. No. O.A. 1249/1987.

Udai Singh Rathi Applicant.

V/s.

Delhi Administration
& Another Respondents.

Applicant through Shri Mukul Talwar,
Counsel.

Respondents through .. Shri M.M. Sudan, Counsel.

CORAM: Hon'ble Mr. Kaushal Kumar, Member (A).

Hon'ble Mr. T.S. Oberoi, Member (J).

(Judgement of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member.)

JUDGEMENT

In these two applications filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants who were appointed as Constables in Delhi Police and whose services were terminated subsequently under the provisions of the Central Civil Services (Temporary Service) Rules, 1965 after they had completed more than three years of service, have challenged the orders of termination of service on the ground of the orders being punitive in nature and casting a stigma on the applicants although on the face of it they are orders simplicitor and do not give any reason for the termination of services. It has also been contended that since the applicants had completed more than three years of service, they should be deemed to have been confirmed as per Rule 5(e) of

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the Delhi Police (Appointment & Recruitment) Rules and, therefore, their services could not be terminated under the CCS (TS) Rules, 1965.

2. Since common points of law are involved in both the cases, we propose to dispose of these applications through ^{this} common judgement.

3. Before we embark on a discussion of the legal issues, the brief facts of each case may be noticed below.

O.A. 1143/1986.

The applicant was selected for the post of Constable (Driver) and appointed on 14.5.1982 as per certificate of appointment (Annexure 'G' to the application). His services were terminated vide order dated 23.9.1986 which is an order issued under proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. The background of the foundation which according to the applicant led to the termination has been given in the application. It is stated in the application that the explanation of the applicant had been called for wherein it was alleged that at the time of his recruitment, the applicant had suppressed the fact of his having been involved in case FIR No. 1498 dated 27.9.78 under Sections 147, 148, 149, 341 and 506 of the Indian Penal Code, Police Station Kalkaji, while filling in column 11 (b) of the Attestation Form at the time of his recruitment. In the counter-affidavit, it has been stated as follows: -

"Constable (Driver) Ganga Ram No. 9188/DAP was enlisted in Delhi Police on 14.5.1982 (FN) and was posted to this Bn. on 5.2.1986. He was a habitual absentee and was incorrigible type of Constt. For his indiffent record of service he had been deferred from quasi permanency twice in 1985 and 86 respectively. Meanwhile it was

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also noticed that a case FIR No.1498 dated 27.9.1978 under Sections 147/148/149/341/IPC P.S. Kalkaji was also registered against him prior to his enlistment but he did not disclose the same facts in Col. No.11(b) of the attestation form. This act of his shows that he had concealed the facts. In view of his indifferent service record his services were terminated vide this office order No.4103/HAP-8th Bn. DAP dated 23.9.1986"

O.A. 1249/1987.

The applicant was appointed as a Constable in Delhi Police on 15.12.1982 vide Certificate of Appointment filed as Annexure 'A' to the application. His services were terminated vide order dated 20.5.1986, which is an order issued under the proviso of sub-rule (i) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. It is stated in para 6(iii) of the application that according to the information of the applicant, his services had been terminated on the ground of his absence from duty at the first instance from 8.3.86 to 28.4.86 and then from 3.5.86 to 25.5.86. It ~~xs~~ has been contended in para 6 (vi) that the respondents could not terminate the services of the applicant on the solitary ground of his absence on 3/4 occasions which in any case if calculated together is not more than the leave due to the applicant. In reply to para 6 (vi), it has been stated in the counter-affidavit that "the petitioner absented himself on 24 occasions without any justification whatsoever. The fact that Earned Leave and casual leave are due in the account of the petitioner does not give petitioner right to absent himself from his duties whenever he likes. Such an attitude is unpardonable in a disciplined force." Details of the absenteeism on the part of the applicant have also been given in para (ii) under

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the heading 'BRIEF FACTS' in the counter-affidavit.

It is also stated in the counter-affidavit that "The services of the above Ex-Constable were terminated on 20.6.86 vide order No.8260-300/ASIP-9th Bn DAP, dated 20.6.86 as he was a habitual absentee and due to his unsatisfactory and indifferent service record. Many opportunities were given to him to improve himself but he did not mend himself and proved himself to be an incorrigible type of Police Officer."

4. We shall first deal with the contention of the learned counsel for the applicants that the applicants having completed more than three years of service should be deemed to be confirmed employees.

5. Rule 5 of the Delhi Police (Appointment and Recruitment) Rules, 1980 deals with 'Recruitment'. Rule 5 (e) reads as follows: -

"(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. "

6. It has been contended that according to Rule 5(e), although all direct appointments are to be made initially on purely temporary basis, the concerned employees have to be on probation for a period of two years which may be extended by one year. The proviso to Rule 5(e)(i) sets a limit to the extension of the probationary period. It makes it mandatory that in no case shall the period of probation extend beyond three years in all. Rule 5(e)(iii) also makes it clear that

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after successful completion of the period of probation, the employee shall be confirmed in the Delhi Police subject to the availability of permanent post. It has been contended that in O.A. 1143/1986, the applicant having been appointed on 14.5.1982, had completed three years of service on 13.5.1985 and in case of the applicant in O.A. 1249/1987, he having been appointed on 15.12.1982 had completed three years on 14.12.1985. After completion of three years of service, the applicants could not be treated as being on probation and the only option with the Department was either to discharge the concerned employees if their probation was not satisfactory or to confirm them as enjoined by Rule 5(e)(iii). Continuance in service beyond three years had the effect of deemed confirmation.

7. On the other hand, the learned counsel for the respondents urged that unless a specific order of confirmation was issued, the concerned employees could not claim the benefit of deemed confirmation after completion of three years of service. They continued to remain temporary employees.

8. Various rulings have been cited by both the sides in support of their respective contentions.

9. In The State of Punjab Vs. Dharam Singh (AIR 1968 S.C. 1210), the Supreme Court was dealing with the effect and implication of Rule 6 of the Punjab Educational Service (Provincialised Cadre) Class III Rules (1961). Rule 6(1) to (3) as quoted in the judgement reads as follows: -

"6(1). Member of the Service, officiating or to be promoted against permanent posts shall be on probation in the first instance for one year.

(2) Officiating service shall be reckoned as period spent on probation, but no member who has officiated in any appointment for one year shall be entitled to be confirmed unless he is appointed against a permanent vacancy.



"(3) On the completion of the period of probation the authority competent to make appointment may confirm the member in his appointment or if his work or conduct during the period of probation has been in his opinion unsatisfactory he may dispense with his services or may extend his period of probation by such period as he may deem fit or revert him to his former post if he was promoted from some lower post.

Provided that the total period of probation including extensions, if any, shall not exceed three years."

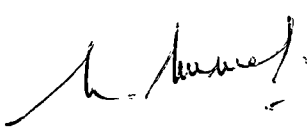
The Supreme Court held as follows: -

"5. In the present case, Rule 6 (3) forbids extension of the period of probation beyond three years. Where, as in the present case, the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation 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. The reason is that such an implication is negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it. In such a case, it is permissible to draw the inference that the employee allowed to continue in the post on completion of the maximum period of probation has been confirmed in the post by implication."

10. It has been contended by the learned counsel for the applicants that Rule 5(e) of the Delhi Police (Appointment and Recruitment) Rules, 1980, referred to above is analogous to Rule 6, sub-rules (1) to (3) of the Punjab Educational Service (Provincialised Cadre) Class III Rules referred to in The State of Punjab Vs. Dharam Singh (supra) and, therefore, the ratio of that judgement

is applicable in the present case. It has been pointed out that as in the case of Rule 6 of the Punjab Educational Service Rules, a maximum limit of three years had been prescribed for the probationary period in the case of the Delhi Police (Appointment and Recruitment) Rules and after completion of the period of probation, the only option left with the competent authority was either to confirm the employee or dispense with his services or revert him to his former post if he had been promoted from some lower post. The Supreme Court had clearly held that where the service rules fix a certain period of time beyond which the probationary period cannot be extended and an employee appointed or promoted to a post on probation 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, the reason being that such an implication is negatived by the service rule forbidding extension of the probationary period beyond the maximum period fixed by it, and in such circumstances the only reasonable inference that can be drawn is that the concerned employee has been confirmed in the post by implication.

10. Shri Sudan, learned counsel for the respondents, vehemently argued that the Regulations on which the judgement of the Supreme Court in *The State of Punjab Vs. Dharam Singh (supra)* was based were different from the ones in the present case inasmuch as the Regulations of the Punjab Educational Service did not give any option for continuance of the service of an employee on a temporary basis after he had completed three years of probation. The only option left was either to confirm the concerned employee or to terminate his services. On the other hand, in the Delhi Police (Appointment and Recruitment) Rules there is no compulsion for terminating the service in case the person is not confirmed on completion of three



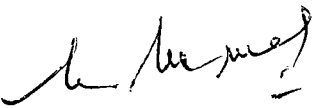
years of probation. Learned counsel Shri Sudan stated that there is no express provision in the Delhi Police Rules that after completion of three years of service, in the event of his work or conduct being found unsatisfactory, his services must necessarily be dispensed with and as such, the theory of deemed confirmation was not applicable in the case of employees recruited under the Delhi Police Rules. According to him, without an express order of confirmation, an employee could not be deemed to have been confirmed. Although the probationary period could not be extended beyond three years, the employee continued to be temporary till there was a positive or express order of confirmation. In this connection, learned counsel Shri Sudan referred to the judgement of the Full Bench of this Tribunal in S.K. Sisodia Vs. Union of India and Others (1988 (7) Administrative Tribunals Cases 852) and relied on the following observations of the Full Bench in para 18 of the judgement: -

"18. The above decisions of the Supreme Court cannot be understood to have laid down that even where there is no prohibition under the service rules against extension of the period of probation and where the rules expressly require an order of confirmation to be made after finding that the probationer has satisfactorily completed his probation, an inference should necessarily be drawn that the probationer was confirmed and by implication he must be deemed to have been appointed permanently. The subsequent decisions of the Supreme Court referred to above clearly declare that in the absence of any rule, a probationer's performance has to be assessed by the competent authority and unless he is confirmed

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after such an assessment, he does not acquire a permanent status. Though there appears to be substance in the grievance of the petitioner that he was not given sufficient training as directed by the General Manager and his deficiencies were noted without giving him the requisite training as ordered by the competent authority on the facts on record, it cannot be doubted that he was not confirmed by the competent authority after the expiry of one year period of probation. When the order of termination itself was passed within 20 days of maximum period of probation, the Tribunal cannot hold that he should be deemed to have been confirmed in the post of Section Controller."

The Full Bench was dealing with the Railway Servants Rules and observed that "Under the Railway Servants Rules, until a railway servant appointed on probation is confirmed, he would be deemed to be a temporary railway servant". In the present case of the Delhi Police Rules, there is a provision prohibiting extension of the period of probation beyond three years and, therefore, the ratio of the Full Bench in the case of Shri S.K. Sisodia is not applicable in the case of the Delhi Police Rules. We have to see the essence and purport of the Delhi Police Rules. If a person's probation cannot be extended beyond three years and the rule also enjoins confirmation thereafter, mere omission in the rule that if he is not confirmed, he shall be retrenched, does not lend itself to the interpretation that a person's services can be continued after completion of three years service on a temporary basis. If a person's probation cannot be extended and the rule also makes it mandatory that on satisfactory completion of probation period of three years, the person concerned shall be confirmed, the only reasonable inference that can be drawn is that if a person is continued in service, he shall be deemed to have been confirmed.



11. In OM PRAKASH MAURYA Vs. U.P. CO-OPERATIVE SUGAR FACTORIES FEDERATION, LUCKNOW AND OTHERS (AIR 1986 S.C.1844), the Supreme Court, while interpreting the U.P. Co-operative Societies Employees Service Regulations, observed as follows: -

"Regulation 17 provides for probation, it lays down that all persons on appointment against regular vacancies shall be placed on probation for a period of one year. Proviso to the Regulation lays down that the appointing authority may in individual cases, extend the period of probation in writing for further period not exceeding one year, as it may deem fit. Clause (ii) of the Regulation provides that if, at any time, during or at the end of the period of probation or the extended period of probation, it appears to the appointing authority that the employee placed on probation, has not made sufficient use of the opportunity offered to him, or has otherwise failed to give satisfaction, he may be discharged from service, or reverted to the post held by him substantively, if any, immediately before such appointment. Regulation 18 provides for confirmation of an employee on the satisfactory completion of the probationary period. Regulations 17 and 18 read together, provide that appointment against a regular vacancy is to be made on probation for a period of one year, this probationary period can be extended for a period of one year more. The proviso to Regulation 17 restricts the power of the appointing authority in extending period of probation beyond the period of one year. An employee appointed against a regular vacancy cannot be placed on probation for a period more than two years and if during the period of probation the appointing authority is of the opinion that the employee has not made use of opportunity afforded to him he may discharge him from service or revert him to his substantive post

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but he has no power to extend the period of probation beyond the period of two years. Regulation 18 stipulates confirmation of an employee by an express order on the completion of the probationary period. The regulations do not expressly lay down as to what would be the status of an employee on the expiry of maximum period of probation where no order of confirmation is issued and the employee is allowed to continue in service. Since Regulation 17 does not permit continuation of an employee on probation for a period more than two years the necessary result would follow that after the expiry of two years probationary period, the employee stands confirmed by implication. This is implicit in the scheme of Regulations 17 and 18."

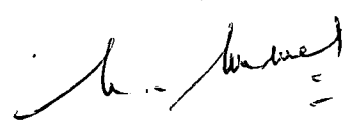
12. Learned counsel Shri Mukul Talwar pointed out that there were analogous provisions regarding probation in the Punjab Police Rules also which had been dealt with by the Supreme Court. In *The Superintendent of Police, Ludhiana and Another Vs. Dwarka Das* (1979 (1) SLR 299), in para 5 of their judgement, their lordships observed as follows: -

"5. Chapter XII of the Rules deals with the appointment and enrolment of police officers. Clause (3) of rule 12.2 provides, inter alia, as follows: -

"(3) All appointments of enrolled police officers are on probation according to the rules in this chapter applicable to each rank."

It is therefore obvious that as the respondents were enrolled police officers, they were on probation. The period of probation has not been specified in the rules, but rule 12.21 provides for the discharge of an inefficient police officer as follows: -

"12.21. A constable who is found unlikely to provide an efficient police officer may be discharge by the Superintendent at any time within three years of enrolment. There shall be no appeal against an order of discharge under this rule."



So if rules 12.2 (3) and 12.21 are read together, it will appear that the maximum period of probation in the case of a police officer of the rank of constable is three years, for the Superintendent of Police concerned has the power to discharge him within that period. It follows that the power of discharge cannot be exercised under rule 12.21 after the expiry of the period of three years. If therefore it is proposed to deal with an inefficient police officer after the expiry of that period, it is necessary to do so in accordance with the rules of Chapter XVI of the Rules which makes provision for the imposition of various punishments including dismissal from the police force. It is not permissible to ignore those rules and make a simple order of discharge under rule 12.21 after the expiry of the period of three years for that will attract Article 311 of the Constitution. The Superintendent of Police concerned could not have ignored that requirement of the law and terminated the services of the three respondents after the expiry of the period of three years from their enrolment in the police force of the State."

13. Rule 5(e) of the Delhi Police (Appointment & Recruitment) Rules, 1980, as it stands at present was substituted vide notification No.F.5/15/82-Home (P) Estt., dated 2.5.1983. Rule 5(e) as it stood before the amendment was as follows: -

"(e) All direct appointments of subordinates ranks shall be made initially on purely temporary basis. All such appointees shall be on probation for a period of 2 years. During this period their work and conduct shall be closely watched and if found unlikely to become efficient police employees, they shall be discharged, after giving one month's notice or one month's pay in lieu thereof, without assigning any reason. On satisfactory completion of probation, they shall be treated as temporary police employees and shall have no claims for substantive appointment. They shall continue to be governed by the terms and conditions

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of service of temporary police employees, till they are confirmed in their appointments on availability of permanent post. If the requisite no. of posts do not become available, they may be considered for grant of quasi-permanent status, on satisfactory completion of three years service as temporary police employees."

14. It will be seen that in the rule as it stood before the amendment of 2nd May, 1983, there was a specific provision that the concerned employees, on satisfactory completion of probation, shall be treated as temporary police employees and they shall have no claim for substantive appointment. They shall continue to be temporary police employees till they are confirmed in their appointments on availability of permanent posts. This provision has now been deleted in the amended rule 5(e) with which we are dealing ~~now~~ and the amended rule as it stands now does not provide for treating an employee who has completed three years of probation as a temporary employee beyond a period of three years as contended by the learned counsel Shri Sudan.

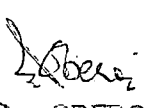
15. Rule 5(e) clearly provides that all employees shall be appointed on probation for a period of two years. The period of probation cannot be extended beyond three years in all. After successful completion of the period of probation, the employee shall be confirmed in the Delhi Police by the competent authority subject to the availability of permanent post.


16. (There being a prohibition on the extension of the period of probation beyond three years and a mandatory requirement for confirmation after successful completion of the period of probation, rule 5(e) is analogous to the Rules & Regulations which were the subject matter of the judgements rendered by the Supreme Court in the cases of the State of Punjab Vs. Dharam Singh, Om Prakash Maurya Vs. U.P. Co-operative Sugar Factories Federation, Lucknow and the Superintendent of Police, Ludhiana Vs. Dwarka Das

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referred to above, and therefore the applicants in the present two cases are deemed to have been confirmed on completion of the period of three years from the date of their initial appointment. Although no plea of non-availability of permanent post has been taken by the respondents to deny confirmation on completion of a period of three years of probation, even if such a plea were taken, the applicants would, in any case, have been entitled to a declaration of quasi-permanent status after completion of three years of service. In either case, action could not be taken under the proviso of sub-rule (1) of Rule 5 of CCS (TS) Rules, 1965 for terminating the services of the applicants. In the light of the view which we have taken we do not consider it necessary to examine the foundation of the orders of termination with a view to determining whether the orders although innocuous on the face of it are really punitive in nature.

17. In view of the above discussion, both the applications are allowed and the orders of termination dated 23.9.1986 and 20.6.1986 are hereby quashed. The applicants shall be reinstated in service forthwith and be entitled to all consequential benefits. There shall be no order as to costs.


(T.S. OBEROI)
MEMBER(J)


(KAUSHAL KUMAR)
MEMBER(A)

4.5.1989.