

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1188/90
T.A. No.

199

DATE OF DECISION 12.4.1991.

Shri Surender Singh Gandhi ~~Petitioner~~ ApplicantShri K.L. Bhatia, Advocate for the ~~Petitioner(s)~~ ApplicantVersus
Delhi Admn. & Others Respondent.

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

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

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?

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman (Judl.)

The applicant, who is working as Head Constable (Ministerial) in the Delhi Police, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (i) to direct the respondents to withdraw the impugned order of penalty of censure dated 31.7.1989;
- (ii) to direct them for confirming him w.e.f. 9.5.1989 and not from 9.11.1989; and
- (iii) to direct them to consider the applicant for promotion to the post of A.S.I. (Min.) from the date his juniors were promoted.

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2. The pleadings in this case are complete. The application has not been admitted. We feel that the application could be disposed of at the admission stage itself and we proceed to do so.

3. The facts of the case in brief are that the applicant has been working as Head Constable (Min.) w.e.f. 25.10.1985. The respondents have annexed a copy of the order of appointment dated 12.12.1985 to their counter-affidavit (Annexure R-1) which contains the ~~and dates of appointment~~ names of five persons, including that of the applicant. In the note appended to the said order, it has been stated, that the inter se seniority of these persons will be fixed later on, and that their appointment has been made under the Delhi Police Act, 1978 and shall be governed by the rules made thereunder. It is further stipulated that they shall also be governed by the Central Civil Services (Temporary Service) Rules, 1965.

4. The first grievance relates to the non-confirmation of the applicant after the expiry of the period of probation. In the instant case, the period of probation of two years was extended for a further period of six months. He was, in fact, confirmed as Head Constable (Min.) with

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effect from 9.11.1989, whereas his juniors were promoted from 9.5.1989.

5. The respondents have stated in their counter-affidavit that the case of the applicant for confirmation w.e.f. 9.5.1989 was considered by the D.P.C. along with others and it was decided to extend the period of his probation by six months w.e.f. 9.5.1989. This was done by taking into account the fact that he was awarded the punishment of censure on 31.7.1989. The penalty of censure was imposed on him on the ground that he disobeyed the direction to attend the general parade held on 28.4.1989. The applicant claims that the penalty of censure which was imposed on him by order dated 31.7.1989, should not have been taken into account by the D.P.C. while considering his case for confirmation.

6. Another grievance of the applicant relates to the non-consideration of his case for promotion to the post of A.S.I.(Min.) from the date his juniors were promoted. The tenability of this claim would depend on whether or not he was entitled to confirmation from 9.5.1989. The case of the applicant is that he should have been considered for promotion along with the other eligible candidates who became senior to him because of their

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confirmation from an earlier date. According to the respondents, as the probation period of the applicant was extended upto 9.11.1989, he should be confirmed only on that date.

7. We have carefully gone through the records of the case and have considered the rival contentions. The penalty of censure was imposed on the applicant after giving him a show-cause notice and considering his reply thereto. In the facts and circumstances of the case, we do not see any justification to interfere with the impugned order of penalty of censure dated 31.7.1989.

8. The position is, however, different with regard to the confirmation of the applicant and his entitlement to be considered for promotion to the post of A.S.I.(Min.) along with the other eligible candidates who became senior to him by virtue of their confirmation from an earlier date.

9. In this context, we may briefly refer to the relevant provisions of the Delhi Police Promotion and Confirmation Rules, 1980, and the Delhi Police Appointment and Recruitment Rules, 1980.

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10. Rule 5 (ii) of the Delhi Police Promotion and Confirmation Rules, 1980 stipulates that promotions from one rank to another against temporary or permanent vacancies, excepting 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 two 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 the conclusion of the probation period, the competent authority may either confirm the promotee or revert, or, if he so thinks fit, extend the period of probation by one year and on the conclusion 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". Rule 18 (1) of the said Rules provides that confirmation in all ranks shall be "strictly on the basis of seniority when permanent posts become available." Rule 18 (iv) further provides that "No member of subordinate rank, who is under suspension or facing departmental/criminal proceedings,

shall be eligible for confirmation. Their cases shall be decided by the DPCs concerned after such proceedings are over. A departmental inquiry shall be deemed to have been initiated after the summary of allegations has been served.

11. Rule 5 (e) which deals with the period of probation, reads as under:-

"L(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. "

12. It will thus be noticed that the normal period of probation of an employee appointed to the 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.

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13. It is quite clear from the aforesaid rules that after the expiry of the maximum period of probation stipulated therein, there is an inference of automatic confirmation. In State of Punjab Vs. Dharam Singh, A.I.R. 1988 S.C. 1210, a Constitution Bench of the Supreme Court has held as follows:-

"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 negated 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."

14. In Om Prakash Vs. U.P. Cooperative Sugar Factories Federation, Lucknow, A.I.R. 1986 S.C. 1844, and M.K. Agarwal Vs. Gurgaon Grameen Bank, A.I.R. 1988 S.C. 286, similar observations have been made.

15. In the instant case, the applicant must be deemed to have been confirmed w.e.f. 25.10.1988, i.e., after the

expiry of three years from the date of his appointment, which was the maximum period during which he could have been placed under probation. Even if a D.P.C. for confirmation were to meet on a subsequent date, it could not take into account the subsequent events to adjudge his suitability for confirmation as on 25.10.1988. The D.P.C. which met in the instant case on 9.5.1989, could not have taken into account the imposition of censure on the applicant by the impugned order dated 31.7.1989. We, therefore, hold that the applicant must be deemed to have been confirmed along with his colleagues w.e.f. 9.5.1989, and that his confirmation w.e.f. 9.11.1989 is not legally sustainable.

16. In the light of the above, we further hold that the applicant's suitability for promotion to the post of A.S.I. should be considered by treating him as having been confirmed w.e.f. 9.5.1989. The D.P.C. should not take into account the penalty of censure imposed on him on a subsequent date. We, therefore, dispose of the present application with the following orders and directions:-

- (i) The prayer of the applicant for setting aside and quashing the impugned order

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of penalty of censure dated 31.7.1989

is rejected;

(ii) the applicant should be deemed to have

been confirmed in the post of Head

Constable (Ministerial) w.e.f. 9.5.1989

and not from 9.11.1989; and

(iii) the case of the applicant for promotion

to the post of A.S.I.(Min.) shall be

considered by the respondents by consti-

tuting a review D.P.C. for the purpose

within a period of three months from the

date of receipt of this order. The review

D.P.C. shall consider the suitability of the

applicant for promotion from the date his

juniors were promoted, ignoring the penalty

of censure imposed on him on 31.7.1989.

There will be no order as to costs.

D. K. Chakravorty

(D. K. Chakravorty)
Administrative Member

12/4/99

P. K. Kartha
12/4/99

(P. K. Kartha)
Vice-Chairman(Judl.)